

# BCI EXHIBIT

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Chapter 11  
LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)  
-----)

\* \* \* HIGHLY CONFIDENTIAL \* \* \*

DEPOSITION OF PHILIP E. KRUSE

New York, New York

Thursday, December 17, 2009

Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

JOB NO. 26533

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 December 17, 2009 6 9:32 a.m. 7 8 9 HIGHLY CONFIDENTIAL videotaped 10 deposition of PHILIP E. KRUSE, held at 11 the offices of Boies Schiller &amp; Flexner, 12 LLP, 575 Lexington Avenue, New York, New 13 York, pursuant to Notice, before Francis 14 X. Frederick, a Certified Shorthand 15 Reporter, Registered Merit Reporter and 16 Notary Public of the States of New York 17 and New Jersey. 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 2 A P P E A R A N C E S: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: JAYANT TAMBE, ESQ. 8 KELLY CARRERO, ESQ. 9 10 BOIES SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays Capital 12 401 East Las Olas Boulevard, Suite 1200 13 Fort Lauderdale, Florida 33301 14 BY: W. TODD THOMAS, ESQ. 15 - and - 16 BOIES SCHILLER &amp; FLEXNER, LLP 17 575 Lexington Avenue - 7th Floor 18 New York, New York 10022 19 BY: JONATHAN P. KRISBERGH, ESQ. 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 4</p> <p>1 2 A P P E A R A N C E S: (Cont'd.) 3 QUINN, EMANUEL, URQUHART, OLIVER &amp; 4 HEDGES, LLP 5 Attorneys for the Creditors Committee 6 51 Madison Avenue 7 New York, New York 10010 8 BY: ERIC M. KAY, ESQ. 9 10 HUGHES, HUBBARD &amp; REED, LLP 11 Attorneys for the SIPA Trustee 12 One Battery Park Plaza 13 New York, New York 10004-1482 14 BY: SETH ROTHMAN, ESQ. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 THE VIDEOGRAPHER: This is the 3 start of tape number one of the 4 videotaped deposition of Philip Kruse in 5 the matter In Re. Lehman. Today's date 6 is December 17th, 2009 at approximately 7 9:32 a.m. Will the court reporter 8 please swear in the witness. 9 * * * 10 P H I L I P K R U S E, called as a 11 witness, having been duly sworn by a 12 Notary Public, was examined and 13 testified as follows: 14 EXAMINATION BY 15 MR. THOMAS: 16 Q. Good morning, Mr. Kruse. 17 A. Morning. 18 Q. Would you please state your name. 19 A. Philip Kruse. 20 Q. And will you please state who you 21 work for? 22 A. I'm with Alvarez &amp; Marsal. 23 Q. And have you been deposed before? 24 A. Yes, I have. 25 Q. Okay. Approximately how many</p>

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 times?</p> <p>3 A. Twice.</p> <p>4 Q. So you understand how this process</p> <p>5 works. I'll be asking questions. If you</p> <p>6 don't understand any of my questions or want</p> <p>7 me to clarify them, please do so. Please ask</p> <p>8 me to do so and I will.</p> <p>9 A. Yes. Of course.</p> <p>10 Q. Okay. Do you understand you've</p> <p>11 been designated here today as a corporate</p> <p>12 representative for both LBHI and Alvarez?</p> <p>13 A. Yes.</p> <p>14 Q. And can you please describe your</p> <p>15 career history just at a very high level.</p> <p>16 A. Graduated in December of 1982 from</p> <p>17 the University of Kansas. Accounting and</p> <p>18 business administration degree. Bachelor of</p> <p>19 science. Began work in January of '83 with a</p> <p>20 public accounting firm in Wichita, Kansas.</p> <p>21 Regier, Carr &amp; Monroe. I was there for three</p> <p>22 and a quarter years. And then began work in</p> <p>23 Shelby Rucksdashel &amp; Jones in Dallas, Texas.</p> <p>24 Was with that firm -- that's a public</p> <p>25 accounting firm. I was with that firm for</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 about a year. And then joined Kenneth</p> <p>3 Leventhal &amp; Company also in Dallas, Texas. I</p> <p>4 was with Kenneth Leventhal &amp; Company from the</p> <p>5 fall -- excuse me -- from the spring of '87</p> <p>6 through November of '92. In November of '92 I</p> <p>7 moved to New York and joined the former</p> <p>8 Deloitte &amp; Touche. I was with Deloitte Touche</p> <p>9 through calendar year 2004 and joined Alvarez</p> <p>10 &amp; Marsal in January of 2005.</p> <p>11 Q. And what is your current position</p> <p>12 with Alvarez &amp; Marsal?</p> <p>13 A. I'm a Managing Director in Our</p> <p>14 Dispute Analysis and Forensics Services Group.</p> <p>15 Q. And what are your duties and</p> <p>16 responsibilities in that position?</p> <p>17 A. Primarily client service. I</p> <p>18 oversee forensic accounting engagements of</p> <p>19 various types. Litigation consulting</p> <p>20 engagements.</p> <p>21 Q. And when did you first become</p> <p>22 involved with LBHI or the LBI sale of assets</p> <p>23 to Barclays?</p> <p>24 A. My first involvement was the day</p> <p>25 the deal closed. I think I was on site the</p>
Page 8	Page 9
<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 afternoon of September 22nd.</p> <p>3 Q. Do you know when Alvarez's first</p> <p>4 involvement with that sale transaction was?</p> <p>5 A. Well, I know that Brian Marcel was</p> <p>6 called the evening of September 14th, Sunday</p> <p>7 evening, by a board member of Lehman. And at</p> <p>8 that time was asked to serve as a chief</p> <p>9 restructuring officer for the entity as it was</p> <p>10 entering bankruptcy. So I think we had people</p> <p>11 on the ground that following day, on the 15th.</p> <p>12 Q. Let me go ahead and show you two</p> <p>13 documents we'll mark as 457A and 458A.</p> <p>14 (Deposition Exhibit 457A, Barclays</p> <p>15 Capital Inc.'s Rule 30(b)(6) Deposition</p> <p>16 Notice to Lehman Brothers Holdings Inc.,</p> <p>17 marked for identification as of this</p> <p>18 date.)</p> <p>19 (Deposition Exhibit 458A, Barclays</p> <p>20 Capital Inc.'s Rule 30(b)(6) Deposition</p> <p>21 Notice to Alvarez &amp; Marsal, marked for</p> <p>22 identification as of this date.)</p> <p>23 BY MR. THOMAS:</p> <p>24 Q. Have you seen these documents</p> <p>25 before?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, I have.</p> <p>3 Q. Okay. And you understand them to</p> <p>4 be -- to contain the topics which you are</p> <p>5 going to serve as a representative for here</p> <p>6 today?</p> <p>7 A. Yes.</p> <p>8 MR. TAMBE: I would only add that,</p> <p>9 you know, at least 457A -- well, both</p> <p>10 457A and 458A have been the subject of</p> <p>11 certain correspondence between my</p> <p>12 partner, Bill Hein, and yourself. And</p> <p>13 there's a letter dated November 2nd in</p> <p>14 which we have noted certain objections</p> <p>15 with respect to 457A as well as 458A.</p> <p>16 And certainly we're producing this</p> <p>17 witness subject to those objections.</p> <p>18 MR. THOMAS: Sure. And you</p> <p>19 received my letter in response.</p> <p>20 MR. TAMBE: Yeah, yeah.</p> <p>21 MR. THOMAS: So you understand --</p> <p>22 MR. TAMBE: We understand your</p> <p>23 position, yeah.</p> <p>24 MR. THOMAS: -- how we're moving</p> <p>25 forward.</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 BY MR. THOMAS:  
3 Q. Since you're kind of wearing two  
4 hats here today and at the suggestion of your  
5 counsel we've agreed to try to conflate the  
6 deposition. We'll have to -- you and I will  
7 both have to be careful to distinguish between  
8 LBHI and Alvarez when appropriate. Sometimes  
9 I'll ask questions framed as LBHI and Alvarez.  
10 Obviously, if you need to draw any kind of  
11 distinction between the two in your answer,  
12 you know, please do so.  
13 A. Yes, of course.  
14 Q. Okay. In terms of your role as an  
15 LBHI representative for these topics can you  
16 please describe what you did to prepare  
17 yourself for answering questions today?  
18 A. My preparation generally entailed  
19 rereading and re-reviewing the Rule 60(b)  
20 motion that LBHI filed as well as the UCC and  
21 the SIPA Trustee and the exhibits to those  
22 filings as well. And I also met with counsel  
23 for about a -- for two days earlier this week.  
24 Q. Did you discuss the deposition  
25 with anyone else?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 THE WITNESS: Presumably the  
3 identity of those people is not subject  
4 to any privilege issues.  
5 MR. TAMBE: No. I think if  
6 they're the people who fall under the  
7 category as you understand the question  
8 and you remember the names then you  
9 should identify them.  
10 A. The people that I recall as I sit  
11 here, and there may be others, Anthony  
12 Collerton, Chris O'Meara. There are others  
13 whose names escape me but, you know, I can --  
14 there are probably at least three or four  
15 others that I know we spoke to at various  
16 times in the course of our work in order to  
17 get the benefit of whatever knowledge they  
18 had.  
19 Q. Let me just try to prompt you with  
20 a couple names and see if you did speak with  
21 them or you otherwise know that they have  
22 knowledge concerning these topics or the sale  
23 transaction.  
24 Christopher Mosher?  
25 A. I don't believe I've spoken to

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. I had discussions with other  
3 people at Alvarez & Marsal in the course of  
4 refreshing my memory about some of this  
5 material.  
6 Q. Let's stay on LBHI for just a  
7 minute. Did you speak with anyone at LBHI to  
8 gain information in order to answer questions  
9 today?  
10 MR. TAMBE: Objection to the form  
11 of the question.  
12 A. Well, you know, the people at LBHI  
13 that generally have knowledge on these topics,  
14 substantially all of them had moved over to  
15 Barclays, and so I wouldn't have had access by  
16 and large to virtually all the people who have  
17 knowledge on these topics as it relates to  
18 LBHI.  
19 Q. Who -- that is who still at LBHI  
20 has knowledge on these topics?  
21 A. There are various people who  
22 either are with or rejoined the estate -- or  
23 joined the estate after the sale that we've  
24 had discussions with in the course of our  
25 work.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 him.  
3 Q. Do you know if he has knowledge  
4 concerning these topics?  
5 A. I do not know.  
6 Q. Catherine Muller?  
7 A. I know Catherine Muller. I'd  
8 spoken to her before. I don't recall that it  
9 was specifically about the Barclays deal,  
10 itself.  
11 Q. Do you know her involvement with  
12 the sale transaction?  
13 A. I don't. She doesn't appear to be  
14 a prominent player by virtue of the material  
15 that I reviewed.  
16 Q. Bill Olshan?  
17 A. Yes. I know Bill Olshan.  
18 Q. Was he involved in the Barclays  
19 transaction?  
20 A. No, he was not. To my knowledge.  
21 Q. Lisa Roitman?  
22 A. I know the name but I don't know  
23 Lisa and I don't know that she had any  
24 involvement either.  
25 Q. Eric Salzman?

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know that name.</p> <p>3 Q. Have you spoken to Mark Shafir</p> <p>4 about the sale transaction?</p> <p>5 A. Mark Shafir?</p> <p>6 Q. Shafir. Excuse me.</p> <p>7 A. I want to say he was deposed -- I</p> <p>8 may have the name mixed up, but I thought Mark</p> <p>9 was deposed in the course of our 2004</p> <p>10 discovery.</p> <p>11 Q. And have you spoken with him about</p> <p>12 the sale transaction?</p> <p>13 A. Not independently, no.</p> <p>14 Q. Martha Solinger?</p> <p>15 A. I've spoken to Martha.</p> <p>16 Q. And --</p> <p>17 A. I don't believe she had any role</p> <p>18 in the transaction.</p> <p>19 Q. Darryl Steinberg?</p> <p>20 A. I know the name. I don't recall</p> <p>21 ever speaking to Darryl.</p> <p>22 Q. Do you know if Mr. Steinberg had</p> <p>23 any involvement in the transaction or</p> <p>24 knowledge of these topics?</p> <p>25 A. Not to my knowledge.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Wendy Uvino?</p> <p>3 A. I do not know that name.</p> <p>4 Q. Okay. Karen Corrigan?</p> <p>5 A. I've seen the name but I don't</p> <p>6 have any recollection of ever talking to her.</p> <p>7 Q. Do you know if she was involved in</p> <p>8 the sale transaction?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Okay. Are the people -- to your</p> <p>11 knowledge, are all the people that I've listed</p> <p>12 are they still at Lehman?</p> <p>13 A. I know certain of the people you</p> <p>14 listed are at Lehman. Others I do not know.</p> <p>15 Q. How about Daniel Ehrmann?</p> <p>16 A. Daniel Ehrmann is an A&amp;M person.</p> <p>17 Q. Was Mr. Ehrmann involved in the</p> <p>18 sale transaction?</p> <p>19 A. No, not to my knowledge.</p> <p>20 Q. Cliff Feibus, F-E-I-B-U-S?</p> <p>21 A. Yes. I know Cliff.</p> <p>22 Q. And is he still at the estate?</p> <p>23 A. Yes. He is with the estate as I</p> <p>24 understand it.</p> <p>25 Q. Was he involved in the sale</p>
Page 16	Page 17
<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 transaction or does he have knowledge</p> <p>3 concerning these topics?</p> <p>4 A. He was not involved to my</p> <p>5 knowledge.</p> <p>6 Q. Joelle Halperin?</p> <p>7 A. I know that name. Don't recall</p> <p>8 speaking to Joelle. Don't know that she had</p> <p>9 any role on the transaction.</p> <p>10 Q. Is she still at LBHI?</p> <p>11 A. I don't know.</p> <p>12 Q. Tom Hommel?</p> <p>13 A. I do know Tom. I've spoken to</p> <p>14 Tom. I don't believe he had any role in the</p> <p>15 transaction.</p> <p>16 Q. Henry Klein?</p> <p>17 A. I do not know that name.</p> <p>18 Q. Gary Mandelblatt?</p> <p>19 A. I know the name. I think I've met</p> <p>20 Gary. In fact, I understand he recently left</p> <p>21 the estate to join NOMURA if I'm not mistaken.</p> <p>22 He was a senior person in our derivatives team</p> <p>23 before he left. I don't know that he had any</p> <p>24 role in the transaction either.</p> <p>25 Q. Did you speak with Chris O'Meara</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 at all in preparation for your testimony</p> <p>3 today?</p> <p>4 A. I spoke to Chris before my</p> <p>5 preparation before but not -- I haven't spoken</p> <p>6 to him recently on this topic.</p> <p>7 Q. Concerning the sale transaction?</p> <p>8 A. Yes.</p> <p>9 Q. And can you describe what the</p> <p>10 conversation was about?</p> <p>11 A. Well, we met with -- I met with</p> <p>12 him along with others and representatives from</p> <p>13 the Jones Day firm --</p> <p>14 MR. TAMBE: And I think I would</p> <p>15 just caution the witness not to disclose</p> <p>16 what would have been a privileged</p> <p>17 conversation if that's the conversation</p> <p>18 you're recalling where folks from Jones</p> <p>19 Day were involved after Jones Day was</p> <p>20 retained to work on this particular</p> <p>21 matter. That would be a privileged</p> <p>22 conversation and I urge you not to</p> <p>23 testify about that. You can testify</p> <p>24 about the fact that the conversation</p> <p>25 occurred but that's it.</p>

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't think I ever spoke to</p> <p>3 Chris independently on this subject without</p> <p>4 Jones Day present so I'll follow instructions</p> <p>5 of counsel and leave it at that.</p> <p>6 Q. Okay. Any of the other people</p> <p>7 that we've gone through on the list did you</p> <p>8 speak with them in preparation for you</p> <p>9 testimony today?</p> <p>10 A. Well, I speak routinely to the</p> <p>11 people in the in-house legal team, Bill</p> <p>12 Olshan, Tom Hommel, Martha Solinger. I</p> <p>13 wouldn't say I spoke to them specifically on</p> <p>14 the subject of this deposition. But the other</p> <p>15 people -- I did not speak to those people</p> <p>16 directly in connection with my preparation.</p> <p>17 Q. Okay. For example, Catherine</p> <p>18 Muller, did you reach out to her for purposes</p> <p>19 of getting ready for the deposition?</p> <p>20 A. No, I did not.</p> <p>21 Q. Okay. And what did you do for</p> <p>22 your preparation with respect to your role as</p> <p>23 the Alvarez 30(b)(6) witness today?</p> <p>24 A. Again, I reviewed the material</p> <p>25 that was filed in connection with our Rule</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 60(b) motion, the other Rule 60(b) motions by</p> <p>3 the other interested parties, the exhibits</p> <p>4 thereto. I met with counsel. I had</p> <p>5 conversations -- a brief conversation with Jim</p> <p>6 Fogarty, really to just introduce Jim to the</p> <p>7 Jones Day firm, making him aware that Jones</p> <p>8 Day would be reaching out to him to schedule</p> <p>9 his deposition. We did try to speak to Jim in</p> <p>10 the last couple of days but he is currently --</p> <p>11 he left A&amp;M, as you may know, and is currently</p> <p>12 the CEO of Charming Shops. And I understand</p> <p>13 he was embroiled in a preparation for and</p> <p>14 participation in a board meeting for his</p> <p>15 company. And we haven't been able to speak to</p> <p>16 him in the last couple of days.</p> <p>17 I spoken to Brian Marsal recently</p> <p>18 in connection with my preparation. I've</p> <p>19 spoken to John Suckow in connection with my</p> <p>20 preparation.</p> <p>21 Q. Anyone else?</p> <p>22 A. Not that I recall, as I sit here.</p> <p>23 Q. What information did you learn</p> <p>24 from Mr. Marsal?</p> <p>25 A. I just generally spoke to him</p>
Page 20	Page 21
<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 about his perspectives on what we as a -- we</p> <p>3 as a firm, A&amp;M were focused on. And how they</p> <p>4 related to some of the material I saw.</p> <p>5 And I'm sorry. I should back up.</p> <p>6 In connection with my preparation I also</p> <p>7 reviewed various e-mail communications that</p> <p>8 were produced as I understand it in this</p> <p>9 matter that involve communications A&amp;M was</p> <p>10 involved in. And I would have spoken to Brian</p> <p>11 to get his perspective on some of the material</p> <p>12 that I'd seen up to that point in my</p> <p>13 preparation.</p> <p>14 Q. Okay. And what information did</p> <p>15 you learn from Mr. Suckow?</p> <p>16 A. Again, it would have been a</p> <p>17 similar nature, to try to get a perspective on</p> <p>18 some of the material I'd seen in connection</p> <p>19 with my preparation.</p> <p>20 Q. So from LBHI you reviewed the Rule</p> <p>21 60 motions and you met with counsel. That was</p> <p>22 pretty much the extent of your getting</p> <p>23 prepared to be answer the questions for LBHI;</p> <p>24 is that correct?</p> <p>25 MR. TAMBE: Objection to the form</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 A. I would agree with that but would</p> <p>4 also just add a point of emphasis that because</p> <p>5 of the work that we had been doing up to this</p> <p>6 point I was generally aware that the people</p> <p>7 that are currently at the estate did not have</p> <p>8 substantial knowledge of the transaction. So</p> <p>9 I didn't feel an immediate need or utility</p> <p>10 that would be served by seeking out some of</p> <p>11 these people you named.</p> <p>12 Q. Okay. In any event, you didn't</p> <p>13 seek them out or talk to them.</p> <p>14 A. Not in connection with the</p> <p>15 preparation itself, no.</p> <p>16 Q. Okay. Let me go ahead and hand</p> <p>17 you an exhibit that's already been marked</p> <p>18 that's the Asset Purchase Agreement.</p> <p>19 I might try to start with the most</p> <p>20 boring stuff first while we're all still</p> <p>21 awake. And basically what I'd like to do is</p> <p>22 basically walk through -- and this really</p> <p>23 relates to topic number 1 in the deposition</p> <p>24 notices and just walk through and ask you</p> <p>25 about valuations that were made or not made</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 with respect to the assets and then the  
3 liabilities.  
4 A. Um-hum.  
5 Q. So at page 6 of the APA -- and  
6 this is a document you're familiar with, I  
7 presume.  
8 A. Yes. I am.  
9 Q. Okay. Under Purchased Assets --  
10 again, I'd like to just walk through and ask  
11 pursuant to topic 1 what your understanding --  
12 what LBHI's and/or Alvarez's understanding was  
13 with respect to the valuations of these  
14 various items. And if the answer is they  
15 don't know or no valuation performed, so be  
16 it. But if there were valuations performed or  
17 there was some knowledge I would like to have  
18 your information on that.  
19 So the first one, the retained  
20 cash, do you know how much -- what value the  
21 retained cash had as of September 17th?  
22 A. No. A&M had no understanding of  
23 this or any of these categories of assets and  
24 what their value was at any point prior to the  
25 closing.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. As I sit here, no.  
3 Q. Do you know -- are there records  
4 at LBHI that would show that?  
5 A. I believe there would be, yes. To  
6 the best of my recollection, I don't believe  
7 there was cash, you know, retained. But I  
8 don't know the particular details of that as I  
9 sit here.  
10 Q. Do you know which documents at  
11 LBHI would show that information?  
12 A. The accounting records generally.  
13 Q. Okay. And you did -- you  
14 mentioned Alvarez did not know the amount of  
15 retained cash prior to closing; is that  
16 correct?  
17 A. Correct.  
18 Q. Did Alvarez ever seek to find out  
19 what the retained cash was prior to closing?  
20 A. No.  
21 Q. Okay. Did they --  
22 MR. TAMBE: Could I just get a  
23 clarification on that.  
24 Prior to the closing did they make  
25 efforts to find other retained cash or

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Okay. How about LBHI?  
3 A. I believe LBHI's understanding  
4 would have been best represented in the  
5 discovery that's been conducted thus far under  
6 our Rule 2004 motion. And that's obviously  
7 part of the record in this matter.  
8 Substantially all the people that were  
9 involved, to my knowledge, have moved over to  
10 Barclays.  
11 Q. Well, I mean, have you tried to  
12 look at any records at LBHI, at the estate, to  
13 determine what the amount of retained cash was  
14 as of September 17th?  
15 A. Anything I would have been -- have  
16 done in connection with the evaluation of  
17 these items would have been done in connection  
18 with, as I understand it, privileged work  
19 under the direction of counsel.  
20 Q. Okay. Well, I'm just -- I don't  
21 want to get into, you know, anything  
22 privileged but I'm just asking simple fact  
23 questions. And I think a fact is not  
24 privileged. So do you know how much retained  
25 cash was -- there was on September 17th?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 after closing did they look back and  
3 say -- I just want clarification on  
4 that.  
5 MR. THOMAS: That's a good point.  
6 It was the former but I'm going to ask  
7 it as to the latter also.  
8 MR. TAMBE: Okay.  
9 Q. At any point, did Alvarez try to  
10 identify how much retained cash there was as  
11 of September 17th or any point up through  
12 closing?  
13 A. We had literally no focus on the  
14 deal, itself, as of -- prior to closing so I  
15 would say no.  
16 Q. Even at a later point in time you  
17 didn't go back and look at the value of the  
18 retained cash prior to closing?  
19 A. Well, there was an effort post  
20 closing to gather the fact base as to what was  
21 transferred over in the deal. And I know that  
22 our -- the A&M team focused on the treasury  
23 function. One of the very first things we do  
24 in a matter like this is to try to understand  
25 as comprehensively as possible what the cash



<p style="text-align: right;">Page 26</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 position is of the entity. So I think there</p> <p>3 would have been an undertaking to understand</p> <p>4 what cash was retained by LBHI after the</p> <p>5 closing and perhaps some of that would have</p> <p>6 touched upon what cash, if any, was</p> <p>7 transferred over in connection with the deal.</p> <p>8 Q. Okay. Well, do you know the</p> <p>9 amount of retained cash there was as of the</p> <p>10 closing?</p> <p>11 A. As I sit here, no.</p> <p>12 Q. Do you know the amount of the</p> <p>13 retained cash that was transferred over, if</p> <p>14 any?</p> <p>15 MR. TAMBE: Object to the form of</p> <p>16 the question.</p> <p>17 A. Yeah, it seems like a</p> <p>18 contradiction, retained cash and transferred</p> <p>19 over.</p> <p>20 Q. You're right. I agree. Bad</p> <p>21 question. I'll withdraw it.</p> <p>22 And, I mean, obviously LBHI at the</p> <p>23 time prior to closing would have known how</p> <p>24 much the retained cash was, correct?</p> <p>25 MR. TAMBE: Object to the form of</p>	<p style="text-align: right;">Page 27</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 the question. You can answer.</p> <p>3 A. Yeah, I would presume LBHI</p> <p>4 personnel understood that, yes.</p> <p>5 Q. Did -- what is LBHI's</p> <p>6 understanding of the value of the deposits</p> <p>7 indicated in subsection B of the Purchased</p> <p>8 Assets as of September 17th?</p> <p>9 A. LBHI's understanding?</p> <p>10 Q. Yes.</p> <p>11 A. Again, I think LBHI's</p> <p>12 understanding would primarily reside with</p> <p>13 people who are no longer with the estate and</p> <p>14 have moved over to Barclays.</p> <p>15 Q. Would it also be reflected in</p> <p>16 documents at the estate?</p> <p>17 A. I believe it is reflected in</p> <p>18 documents obtained in discovery in this</p> <p>19 matter, yes.</p> <p>20 Q. Okay. Do you know what those</p> <p>21 documents indicate in terms of the values of</p> <p>22 the deposits?</p> <p>23 A. Not specifically as I sit here. I</p> <p>24 have a vague recollection of various documents</p> <p>25 I've seen on this subject. But --</p>
<p style="text-align: right;">Page 28</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. What are the documents you think</p> <p>3 show the valuation of the deposits?</p> <p>4 A. As I say, I don't have a specific</p> <p>5 recollection of what the amount is now. I</p> <p>6 would have to go back and gather the documents</p> <p>7 that I am vaguely thinking of and undertake to</p> <p>8 do that. I haven't done it specifically.</p> <p>9 Q. Right. I'm just wondering can you</p> <p>10 describe the documents that you're thinking of</p> <p>11 that you're referring to when you...</p> <p>12 A. Well, there's material that was</p> <p>13 produced in the course of the 2004 discovery,</p> <p>14 for example, that speaks to -- and some of</p> <p>15 this might depend on whether this qualifies</p> <p>16 under deposits as defined here. I'm not</p> <p>17 prepared to say that it does because I haven't</p> <p>18 really discussed that particular correlation.</p> <p>19 But I know there's material speaking to</p> <p>20 15(c)(3) deposits, for example, that were</p> <p>21 transferred over or intended to transfer over.</p> <p>22 Q. Is it fair to say for A and B, the</p> <p>23 retained cash and the deposits, the valuations</p> <p>24 of those two items would be contained in LBHI</p> <p>25 documents but that you haven't gone to those</p>	<p style="text-align: right;">Page 29</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 documents to go try to determine those values?</p> <p>3 MR. TAMBE: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I haven't independently separately</p> <p>6 tried to do that. I know that in the material</p> <p>7 produced, for example in the 2004 discovery,</p> <p>8 that there is material that would speak to</p> <p>9 this issue.</p> <p>10 Q. And I think you said there would</p> <p>11 be obviously documents at LBHI that would have</p> <p>12 this information, correct?</p> <p>13 A. Yeah. And let me just clarify.</p> <p>14 When we talk about documents at LBHI, we</p> <p>15 should understand that all the systems were</p> <p>16 transferred over to Barclays in connection</p> <p>17 with the sale. So anything that LBHI had was</p> <p>18 then moved over to Barclays, as I understand</p> <p>19 it, in connection with the transaction. We've</p> <p>20 had a process under way for quite some time</p> <p>21 operating under a Transition Services</p> <p>22 Agreement with Barclays to retain the data and</p> <p>23 information that was moved over in connection</p> <p>24 with that deal. So I just wanted to offer</p> <p>25 that point of clarification.</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Right. But the estate still has  
3 access to those documents and that  
4 information, correct?  
5 A. Generally, yes. There were quite  
6 a few difficulties early on in the first  
7 quarter particularly in getting the  
8 information we needed just to run the estate  
9 in the manner we deemed necessary.  
10 Q. Moving on to subpart C, the  
11 transferred real estate -- excuse me -- the  
12 transferred real property leases. At any  
13 point did -- strike that.  
14 What was LBHI's or Alvarez's  
15 understanding of the value of those leases as  
16 of September 17th?  
17 A. As of September 17th Alvarez would  
18 have had no knowledge of it. LBHI's  
19 understanding would have been as probably more  
20 appropriately determined through contact with  
21 people who moved over to Barclays.  
22 Q. Would the value of the leases also  
23 be reflected in LBHI documents?  
24 A. Yes, they would.  
25 Q. And you haven't tried to identify

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2 figure?  
3 A. No.  
4 Q. And just to be clear when I'm  
5 asking about value of these things as of  
6 September 17th, it's whether the valuation was  
7 known at the time or later on, just to be  
8 clear. So if Alvarez did a later study to see  
9 how much the leases were worth, you know, two  
10 months down the road, that would be, you know,  
11 contained in my question also.  
12 So the question is at any time --  
13 or regardless of when they knew the value, did  
14 Alvarez make any assessment of the value of  
15 these leases in subpart C?  
16 A. As of September 17th, no.  
17 Anything that's been done since then as I said  
18 was generally done under the direction of  
19 counsel.  
20 Q. Okay. Well, did they make an  
21 effort to value these leases at any point  
22 whether under the direction of counsel or not?  
23 MR. TAMBE: I think that gets into  
24 the subject matter of what may have been  
25 done at the direction of counsel. I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 the value from those documents?  
3 MR. TAMBE: Object to the form of  
4 the question.  
5 A. Well, there's been an effort to  
6 identify the inventory of the items that  
7 transferred over. But the work that we've  
8 done in that regard has generally been done  
9 under the direction of counsel.  
10 Q. Okay. But for purposes of this  
11 deposition you haven't gone and found out what  
12 the LBHI documents say about the value of the  
13 leases in subpart C?  
14 A. Well, I've seen documents that  
15 speak to issues like this. I'm not going to  
16 be able to quote to you sitting here without  
17 anything in front of me what that reflects.  
18 Q. Well, do you have any idea what  
19 the value of those leases were as of September  
20 17th?  
21 A. Not specifically. I think it was  
22 relatively nominal compared to the overall  
23 value of the assets transferred in connection  
24 with the deal.  
25 Q. Can you give me some ball park

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 think that therefore would invade work  
3 product and attorney-client  
4 communications.  
5 MR. THOMAS: Just the fact of it?  
6 MR. TAMBE: The subject matter of  
7 what it is that they -- what steps they  
8 would have taken.  
9 MR. THOMAS: Okay.  
10 BY MR. THOMAS:  
11 Q. Well, let me ask a different  
12 question then.  
13 Do you have any idea how much  
14 these leases were worth?  
15 A. Not specifically, no.  
16 Q. Generally?  
17 A. They were relatively nominal in  
18 relation to the value of all the assets that  
19 were transferred.  
20 Q. Okay. Could you tell me what  
21 nominal means to you?  
22 A. I believe it was -- I don't know.  
23 Actually, as I think about it, I believe  
24 Barclays may have ascribed a value to the  
25 lease terms, the economic lease terms, versus

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 market in connection with their purchase</p> <p>3 accounting that they ascribed, but I don't</p> <p>4 recall specifically what the number was. I</p> <p>5 just know that it wasn't a particularly</p> <p>6 material item in relation to the overall deal.</p> <p>7 Q. Okay. Subsection D is Government</p> <p>8 Securities, Commercial Paper, Corporate Debt,</p> <p>9 Corporate Equity, Exchange Traded Derivatives</p> <p>10 and Collateralized Short-Term Agreements.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. This describes -- references it</p> <p>14 having approximately \$70 billion book value.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And it's then referred to as the</p> <p>18 long positions. Has Alvarez ever done -- made</p> <p>19 any efforts to value these items in subpart D?</p> <p>20 MR. TAMBE: Objection to the form</p> <p>21 of the question.</p> <p>22 A. Anything we've done in connection</p> <p>23 with valuing these securities has been done</p> <p>24 under the direction of counsel. We certainly</p> <p>25 didn't have any understanding of this at the</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 time the deal was done or closed.</p> <p>3 Q. Do you know the -- does either</p> <p>4 Alvarez or LBHI have a list of the actual</p> <p>5 CUSIPS for these items in subpart D?</p> <p>6 MR. TAMBE: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes.</p> <p>9 Q. They do.</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if that list has been</p> <p>12 produced?</p> <p>13 A. Any list we got I believe would</p> <p>14 have been part of the production in the Rule</p> <p>15 2004 discovery if I'm not mistaken.</p> <p>16 Q. So without getting into the</p> <p>17 substance of any efforts to value this at the</p> <p>18 direction of counsel, when was such efforts</p> <p>19 made? The date.</p> <p>20 A. The work in that respect would</p> <p>21 have been since Jones Day was retained in</p> <p>22 March of 2009.</p> <p>23 Q. And as you sit here today as both</p> <p>24 an Alvarez and an LBHI representative do you</p> <p>25 have any understanding as -- or what do you</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 believe the items in subsection D were worth</p> <p>3 as of September 17th?</p> <p>4 MR. TAMBE: Objection to the form</p> <p>5 of the question and to the extent you're</p> <p>6 asking him to disclose what may have</p> <p>7 been obtained through work product done</p> <p>8 at the direction of counsel I'd instruct</p> <p>9 him not to answer.</p> <p>10 A. Anything I could answer with</p> <p>11 respect to that would be done under direction</p> <p>12 of counsel. Again, at the time this deal was</p> <p>13 done Alvarez &amp; Marsal would have had no</p> <p>14 understanding of the values of these</p> <p>15 securities beyond what was disclosed or talked</p> <p>16 about in court hearings.</p> <p>17 I know that shortly after the deal</p> <p>18 closed there was an attempt to just gather the</p> <p>19 fact set from people who were then Barclays</p> <p>20 personnel and get a CUSIP-by-CUSIP listing of</p> <p>21 what was transferred over. I believe that</p> <p>22 listing that we obtained at that time had</p> <p>23 values ascribed to but we didn't undertake at</p> <p>24 that point to independently value or verify</p> <p>25 what was being portrayed in that data.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Well, what was transferred over</p> <p>3 ultimately was not what's in subsection D,</p> <p>4 correct?</p> <p>5 A. Yes. You're correct. Thank you</p> <p>6 for that correction.</p> <p>7 Q. Right. So as I understand it, any</p> <p>8 knowledge that you have as a representative of</p> <p>9 LBHI or Alvarez as to the actual value of the</p> <p>10 products, the securities in subpart D as of</p> <p>11 September 17th, is being claimed as privileged</p> <p>12 work product?</p> <p>13 A. Yes.</p> <p>14 MR. TAMBE: Objection to the form</p> <p>15 of the question. I think I would take</p> <p>16 issue with any knowledge. We can step</p> <p>17 outside and we can -- outside the</p> <p>18 hearing of the witness so I can explain</p> <p>19 to you what I think the disconnect might</p> <p>20 be. And you can come back and rephrase</p> <p>21 the question.</p> <p>22 I don't want to interrupt your</p> <p>23 examination but I think you may be</p> <p>24 talking a little bit past each other.</p> <p>25 And I could clear that up and I'd rather</p>

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2 do that outside the hearing of the  
3 witness so --

4 MR. THOMAS: Okay. Sure. Why  
5 don't we go off the record and just take  
6 a minute.

7 THE VIDEOGRAPHER: The time is  
8 10:10. We are going off the record.  
9 (Recess taken.)

10 THE VIDEOGRAPHER: The time is  
11 10:12. We are back on the record.

12 BY MR. THOMAS:

13 Q. Mr. Kruse, at the suggestion of  
14 your counsel I just wanted to clarify whether  
15 you believe there is a list of CUSIPS or any  
16 other document that identifies the particular  
17 items that are contained in subsection D.

18 A. There is not, to my knowledge.

19 Q. So when you were talking about a  
20 list of CUSIPS that you had what were you  
21 referring to?

22 A. I was referring to the securities  
23 actually transferred as the deal was  
24 culminated on the 22nd.

25 Q. The fed repo collateral?

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2 A. Yes. Among others.

3 Q. Okay. Turning to subpart E, 50  
4 percent of each position in the residential  
5 real estate mortgage securities.

6 Do you see that?

7 A. Yes.

8 Q. What is LBHI's understanding of  
9 the value of those securities as of September  
10 17th, 2008?

11 MR. TAMBE: And objection to the  
12 form of the question.

13 A. LBHI's understanding as of that  
14 date?

15 Q. LBHI's understanding at any time  
16 as to the value of those securities as of that  
17 date.

18 A. LBHI's understanding would be  
19 embodied from the documents that are available  
20 at the time this deal was being negotiated.  
21 And in terms of what the individual employees  
22 of LBHI understood, again, I think those  
23 people have generally moved over to Barclays  
24 who would have had a specific understanding of  
25 this.

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2 Q. When you say generally, which  
3 employees still at the estate would have some  
4 understanding of this?

5 A. None that I can think of as I sit  
6 here.

7 Q. Okay. So the value would be in  
8 estate documents but that's -- you haven't  
9 gone and tried to figure out the value of  
10 these securities as of September 7th for  
11 purposes of this deposition. As of September  
12 17th, excuse me.

13 A. No. I have not attempted to  
14 determine the value of that particular item  
15 for purposes of my evaluation.

16 Q. Has Alvarez ever attempted to  
17 value those securities as of September 17th?

18 MR. TAMBE: Again, I'll caution  
19 the witness to the extent that Alvarez  
20 has been asked or not asked to do  
21 particular tasks by counsel, that would  
22 be covered by work product privilege.

23 A. Yeah. Anything we've done on  
24 this -- in that respect would have been done  
25 under a direction of counsel.

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2 Q. So Alvarez first got the call to  
3 get involved on the night of September 14th;  
4 is that right?

5 A. Yes.

6 Q. And you said they were involved  
7 with Lehman starting the next day.

8 A. We had people on the ground the  
9 next day.

10 Q. And those people would have been,  
11 among other things, working to learn about  
12 this sales transaction with Barclays?

13 A. Well, I think Brian Marsal who  
14 you're going to be deposing in a few days can  
15 speak to this more directly than I but it's my  
16 understanding that the Alvarez & Marsal people  
17 who were on site were essentially directed not  
18 to get involved in the deal, itself, you know,  
19 that this was something that was going to be  
20 handled independent of our involvement and our  
21 role was really to administer the estate  
22 separate and apart from the deal that was  
23 being negotiated at that point.

24 Q. What's the basis of that  
25 understanding?

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. Discussion with Brian Marsal and</p> <p>3 various other people who were on site at the</p> <p>4 time.</p> <p>5 Q. Are you saying that somebody at</p> <p>6 Lehman told Alvarez not to get involved with</p> <p>7 the sale transaction?</p> <p>8 A. In sum and substance. I don't</p> <p>9 know if I'd characterize it exactly that way.</p> <p>10 But it was well understood on the part of our</p> <p>11 team, as I understand it, that our</p> <p>12 participation, our involvement in the deal,</p> <p>13 itself, was not something that anybody wanted</p> <p>14 or expected.</p> <p>15 Q. Can you describe who said what to</p> <p>16 whom?</p> <p>17 A. I think you're probably better</p> <p>18 asking Brian Marsal the specifics of that.</p> <p>19 Q. Can you describe anyone at Lehman</p> <p>20 who had that type of discussions with anyone</p> <p>21 at Alvarez?</p> <p>22 A. All I can do is guess and I don't</p> <p>23 think you want me to do that.</p> <p>24 Q. Well, if you have any basis for</p> <p>25 guessing I'll take your guess with the caveat</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 that it's a guess.</p> <p>3 A. I would infer that Steven</p> <p>4 Berkenfeld might have been one of the people</p> <p>5 that was directing that aspect of our</p> <p>6 retention.</p> <p>7 Q. So is it your testimony prior to</p> <p>8 closing that Alvarez was not involved in any</p> <p>9 way in the sales transaction?</p> <p>10 A. Yes, it is my testimony.</p> <p>11 Q. And it was not reviewing</p> <p>12 documents?</p> <p>13 A. In connection with the sales</p> <p>14 transaction.</p> <p>15 Q. Yes.</p> <p>16 A. No. We were not.</p> <p>17 Q. When did anyone from Alvarez first</p> <p>18 review any of the sale documents, to your</p> <p>19 knowledge?</p> <p>20 A. Within a few days after closing</p> <p>21 I've seen e-mail correspondence speaking to I</p> <p>22 think what I referred to earlier, an attempt</p> <p>23 to gather just the factual data of the</p> <p>24 specific securities and CUSIPS that were</p> <p>25 transferred over in the deal so that we had</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 that data essentially locked down for purposes</p> <p>3 of administering the estate, knowing what was</p> <p>4 ours and what was not ours and what had moved</p> <p>5 over in the deal.</p> <p>6 Q. Turning to subpart F, Furniture</p> <p>7 and Equipment, what is LBHI's understanding of</p> <p>8 the value of those items as of September 17th?</p> <p>9 A. LBHI's understanding?</p> <p>10 Q. Yes.</p> <p>11 A. Again, I'm going to have sort of a</p> <p>12 repetitive comment about LBHI because I think</p> <p>13 anybody LBHI as I say who would have been</p> <p>14 focused on these particular things was</p> <p>15 generally moved over to Barclays. The LBHI</p> <p>16 documents I think speak for themselves and</p> <p>17 have been made available in terms of what</p> <p>18 these things might have been recorded at, et</p> <p>19 cetera. I'm not aware of any independent</p> <p>20 valuation done of furniture and equipment, for</p> <p>21 example. I don't even think a value was</p> <p>22 ascribed in the context of the deal.</p> <p>23 Q. Okay. And, again, you haven't</p> <p>24 reached out to people still at Lehman to see</p> <p>25 if they know about these values, correct?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I think we went over what I had</p> <p>3 done in preparation for the deposition. I'd</p> <p>4 spoken to certain of these people. But not</p> <p>5 directly in connection with my preparation for</p> <p>6 the deposition.</p> <p>7 Q. I mean, let me ask. Did you ask</p> <p>8 anyone at Lehman if they knew if there was any</p> <p>9 valuation of the items under Purchased Assets?</p> <p>10 A. I don't recall asking that</p> <p>11 question specifically. It's pretty clear from</p> <p>12 the documentation I've seen that nobody</p> <p>13 attempted to ascribe a value. It's as if it</p> <p>14 was thrown into the deal inherently but no one</p> <p>15 attempted to ascribe furniture and</p> <p>16 equipment -- ascribe a value.</p> <p>17 Q. I'm sorry.</p> <p>18 A. No.</p> <p>19 Q. Do you have any understanding as</p> <p>20 to why there was no attempt to ascribe a value</p> <p>21 for some of these items?</p> <p>22 A. I do not.</p> <p>23 Q. Let me just ask you then, maybe to</p> <p>24 speed things up, if you'd take a minute to</p> <p>25 just go through all -- briefly review all the</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 other subparts under the definition of  
3 Purchased Assets. And I'm going to ask you a  
4 very similar line of question that covers all  
5 of them. So if you want to take a minute to  
6 review that, please do.  
7 A. Items G through the end of that  
8 section?  
9 Q. Yes. G through S.  
10 (Document review.)  
11 A. Okay.  
12 Q. As you sit here today either in  
13 your capacity as the LBHI representative or  
14 the Alvarez representative, do you have any  
15 understanding of the value of any of those  
16 items, G through S, as of September 17th,  
17 2008?  
18 MR. TAMBE: Objection to the form  
19 of the question.  
20 A. There -- as far as I know in  
21 connection with the deal, itself, there was  
22 little, if any, attempt to ascribe a value to  
23 the various individual classes of assets that  
24 are described here.  
25 You know, I think in the context

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2 understanding he has learned is from  
3 work directed by counsel, he shouldn't  
4 be talking about that. If he has other  
5 bases for knowing valuations ascribed by  
6 others to those assets you can ask him  
7 about that.  
8 MR. THOMAS: Okay.  
9 BY MR. THOMAS:  
10 Q. Do you have any basis for knowing  
11 the values of any of the items listed under  
12 Purchased Assets other than from the work done  
13 at the direction of counsel?  
14 A. A stand-alone valuation, no. I  
15 think I've seen information suggesting book  
16 value or accounting some of these -- what some  
17 of these items might have been recorded at in  
18 the books and records of Lehman at the time.  
19 Q. Do you know -- can you identify  
20 what those values were recorded in the books  
21 and records of Lehman at the time for any of  
22 these?  
23 A. No. Not as I sit here.  
24 Q. Did you understand that to be the  
25 information sought in topic 1 of the

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2 of the deal there was a \$250 million price for  
3 the franchise, if you will, that was ascribed  
4 and I would think most people who were  
5 involved with the deal would have said that  
6 was intended to include items like this.  
7 If your question is different than  
8 that, is there a separate independent attempt  
9 to ascribe a value to any of this on the part  
10 of LBHI, I think that question could best be  
11 answered by the people who are intimately  
12 involved in the deal itself who have since  
13 moved over to Barclays.  
14 In terms of anything A&M has done  
15 in that vein, again, the answer would be any  
16 work done in the context of valuation of the  
17 deal, itself, would have been done under  
18 direction of counsel.  
19 MR. THOMAS: And just to be clear,  
20 you're instructing him not to answer as  
21 to the amount or the valuation of any of  
22 these items.  
23 MR. TAMBE: What I'm instructing  
24 him not to answer is to the extent the  
25 valuation work or the valuation

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 deposition notice?  
3 MR. TAMBE: I object to the form  
4 of that question. We certainly didn't  
5 understand topic 1 to be a memory quiz  
6 of various items of valuation for  
7 various assets. If you have documents  
8 to show him -- he said documents reflect  
9 values ascribed by others. If you show  
10 him documents he can confirm for you  
11 what his views are on those documents.  
12 MR. THOMAS: Well, the topic is  
13 for the market value of a list of  
14 assets. And your 30(b)(6) witness can't  
15 identify any values for any of those  
16 assets. So maybe he certainly could  
17 have -- if it was a memory issue he  
18 certainly could have prepared a document  
19 or notes to tell him what the values  
20 are. But that's what the topic asked  
21 for and I just want to confirm --  
22 MR. TAMBE: I disagree in terms of  
23 what you think the obligations would be  
24 to respond to a notice such as that.  
25 But it's fine. You can ask your

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 question.</p> <p>3 A. I think there was a pending</p> <p>4 question as to what I did in connection with</p> <p>5 topic number 1.</p> <p>6 Q. No. It's what you under --</p> <p>7 whether you understood topic number 1 to be</p> <p>8 seeking information concerning the market</p> <p>9 values of the assets listed in the definition</p> <p>10 of Purchased Assets in the APA.</p> <p>11 A. I read this topic to say your</p> <p>12 understanding as of September 17th, 2008 of</p> <p>13 the market value of each asset set forth in</p> <p>14 each subparagraph that mention purchased</p> <p>15 assets, et cetera. And how that changed at</p> <p>16 any time before the closing.</p> <p>17 I think I've testified that</p> <p>18 generally speaking Alvarez &amp; Marsal had no</p> <p>19 knowledge of what these items were worth</p> <p>20 during that time frame. No involvement. No</p> <p>21 knowledge. Any knowledge on the part of LBHI,</p> <p>22 as I've testified already that LBHI's</p> <p>23 knowledge would be best embodied by people who</p> <p>24 are now employed by Barclays and in the</p> <p>25 documents that have been produced in this</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 case.</p> <p>3 Q. Okay. So just to be clear,</p> <p>4 there's information about the values of these</p> <p>5 items that are in Lehman documents but you</p> <p>6 haven't gone and tried to identify those</p> <p>7 values, correct?</p> <p>8 A. No. Not in a comprehensive way.</p> <p>9 I'm aware generally of the documents that</p> <p>10 might refer to it but we're talking about</p> <p>11 volumes of material here.</p> <p>12 Q. And I really don't want to belabor</p> <p>13 this but are there any assets here that you</p> <p>14 feel that you can tell us the market value as</p> <p>15 of September 17th? And here being items</p> <p>16 listed under Purchased Assets.</p> <p>17 MR. TAMBE: Object to the form of</p> <p>18 the question.</p> <p>19 A. I may have misread what this topic</p> <p>20 intended. Your understanding as of September</p> <p>21 17th, 2008 of the market value. I've said we</p> <p>22 had no understanding as of September 17th,</p> <p>23 2008. We also had no understanding through</p> <p>24 the date of the closing as to what the market</p> <p>25 value was.</p>
Page 52	Page 53
<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay.</p> <p>3 Well, we'll revisit that in later</p> <p>4 topics.</p> <p>5 In terms of the liabilities -- let</p> <p>6 me back up one second.</p> <p>7 I think you made a comment that</p> <p>8 maybe some of these -- or some or all of the</p> <p>9 items would have been covered by the</p> <p>10 \$250 million payment. Do you recall</p> <p>11 mentioning that?</p> <p>12 MR. TAMBE: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I recall saying something along</p> <p>15 those lines.</p> <p>16 Q. Okay. What was your basis for</p> <p>17 that?</p> <p>18 A. It's really surmising what we</p> <p>19 learned in the discovery in the case thus far</p> <p>20 as to what the \$250 million acquisition</p> <p>21 cost -- element of the acquisition cost was</p> <p>22 intended to be cover.</p> <p>23 Q. Is that just your surmise or is</p> <p>24 there some information that that's based on?</p> <p>25 A. I can't quote specifically every</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 source for that but that's a general surmise</p> <p>3 from the totality of the evidence I'm aware of</p> <p>4 in this case. The deposition testimony.</p> <p>5 Other e-mails and other documents that I've</p> <p>6 seen.</p> <p>7 Q. And you can't point to anything in</p> <p>8 particular.</p> <p>9 A. Not as I sit here, no.</p> <p>10 Q. Is it your belief that the value</p> <p>11 of all of the items underneath Purchased</p> <p>12 Assets totaled up would be less than 250</p> <p>13 million?</p> <p>14 MR. TAMBE: That's not what he</p> <p>15 testified to. That was the answer to</p> <p>16 items G through S.</p> <p>17 MR. THOMAS: Okay. Thanks for</p> <p>18 clarifying that.</p> <p>19 MR. TAMBE: Yeah.</p> <p>20 Q. Are you just referring to items G</p> <p>21 through S? When you say 250 million?</p> <p>22 Or let me just strike that.</p> <p>23 To be clear, what items do you</p> <p>24 think were covered by the 250 million?</p> <p>25 A. I think as I testified, it's my</p>

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 understanding that the overall value of the</p> <p>3 franchise, Lehman Brothers, Inc., and the</p> <p>4 business -- the portion of that business that</p> <p>5 was being acquired was intended to be acquired</p> <p>6 for \$250 million. That was the -- anything</p> <p>7 that wasn't otherwise specifically valued</p> <p>8 would almost by inference have been included</p> <p>9 in the catch-all of the \$250 million</p> <p>10 acquisition cost, which costs, by the way, I</p> <p>11 understand never actually went to LBHI. It</p> <p>12 was used to cover a DTC obligation by the time</p> <p>13 the deal was ultimately consummated.</p> <p>14 Q. Well, the only item under</p> <p>15 Purchased Assets that has any type of</p> <p>16 valuation or description is subsection D,</p> <p>17 correct?</p> <p>18 MR. TAMBE: Objection to the form</p> <p>19 of the question.</p> <p>20 A. I'm sorry. Could you repeat that?</p> <p>21 Q. Sure. I believe in your prior</p> <p>22 answer you mentioned that unless it had some</p> <p>23 other valuation that you thought it might</p> <p>24 be -- you surmised that it might be part of --</p> <p>25 covered by the \$250 million; is that correct?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection to the form</p> <p>3 of the question. You might want to read</p> <p>4 back his answer. That's not what he</p> <p>5 said.</p> <p>6 MR. THOMAS: Well, okay.</p> <p>7 Q. At the suggestion of your counsel</p> <p>8 I believe what you said was, "Anything that</p> <p>9 wasn't otherwise specifically valued would</p> <p>10 almost by inference have been included in a</p> <p>11 catch-all of the 250 million acquisition</p> <p>12 cost."</p> <p>13 And I just wanted to -- looking at</p> <p>14 the list under Purchased Assets, which items</p> <p>15 would you say are those that weren't otherwise</p> <p>16 specifically valued?</p> <p>17 A. Which of these items weren't</p> <p>18 otherwise specifically valued? Or which were</p> <p>19 specifically valued?</p> <p>20 Q. Either way you want to do it.</p> <p>21 A. I mean, you pointed to item D.</p> <p>22 Yeah, there was a separate valuation ascribed</p> <p>23 in the context of the deal to the securities</p> <p>24 that were transferred. I mean, I'd be</p> <p>25 completely fluent sitting here without</p>
Page 56	Page 57
<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 documents in front of me as to all the</p> <p>3 elements of the deal, but there were not a lot</p> <p>4 of individual assets wherein a value was</p> <p>5 ascribed other than the securities as I</p> <p>6 recall.</p> <p>7 Q. I mean, you've kind of thrown out</p> <p>8 your surmise that maybe these other assets</p> <p>9 were valued at less than 250 million. I'm</p> <p>10 just trying to test that and see which assets</p> <p>11 you're talking about when you surmised that.</p> <p>12 And would it include E? You think 50 percent</p> <p>13 of the RESI's?</p> <p>14 A. It might help -- because perhaps</p> <p>15 I've confused the record a little bit. We're</p> <p>16 talking here about the September 16th Asset</p> <p>17 Purchase Agreement which I think as we</p> <p>18 generally understand now was changed in a</p> <p>19 fairly material fashion before the deal was</p> <p>20 closed.</p> <p>21 As of the time this APA was being</p> <p>22 contemplated in the context of the deal, I can</p> <p>23 give you my surmise or my understanding of how</p> <p>24 people were thinking about this at the time</p> <p>25 that the APA was the focus of the deal. But</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 this APA becomes morphed into something</p> <p>3 different through the amendment to the APA and</p> <p>4 the clarification letter.</p> <p>5 Q. So are you saying that the assets</p> <p>6 listed here really aren't relevant to the</p> <p>7 final deal?</p> <p>8 MR. TAMBE: Object to the form of</p> <p>9 the question.</p> <p>10 A. No. I'm not saying that.</p> <p>11 Q. Okay.</p> <p>12 A. I'm just saying there's a lot</p> <p>13 of -- I fear there could be some confusion on</p> <p>14 the record as I talk about these assets in the</p> <p>15 context of this APA because the deal</p> <p>16 ultimately evolves into something different,</p> <p>17 at least in terms of how the deal was</p> <p>18 finalized.</p> <p>19 Q. Okay. So, I mean, we're trying to</p> <p>20 just find out what LBHI and Alvarez thinks was</p> <p>21 the value of these purchased assets as of</p> <p>22 September 17th and how they may have changed.</p> <p>23 Just to summarize your answer, you --</p> <p>24 neither -- the only information you would have</p> <p>25 about any valuations here are work that</p>



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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Alvarez has done at the direction of counsel  
3 this year; is that correct?  
4 MR. TAMBE: Objection to the form  
5 and that's not his testimony.  
6 A. Specific to your topic as I  
7 understood in reading this topic, Alvarez &  
8 Marsal's understanding as of September 17th,  
9 2008 of the market value of each of these  
10 classes of assets under Purchased Assets, we  
11 had no understanding as of that date or as of  
12 the closing date.  
13 Q. And LBHI obviously did. So with  
14 respect to LBHI, can you tell me your  
15 understanding of any of these values?  
16 MR. TAMBE: Again, asked and  
17 answered. Go ahead.  
18 A. I think LBHI's understanding can  
19 best be gleaned from speaking to employees  
20 that have gone over to Barclays.  
21 Q. When did Alvarez become aware  
22 that -- strike that.  
23 Looking at topic number 2, what is  
24 Alvarez's understanding of the \$47.4 billion  
25 figure that was referenced during the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 idea. I mean, it's obviously -- you know, you  
3 can infer what it was intended to represent.  
4 I just haven't seen a correlation how that  
5 number was derived and how it was -- how it  
6 correlates to the securities that are actually  
7 transferred in the deal.  
8 Q. What is your best understanding of  
9 what that number represents?  
10 A. My best understanding of what that  
11 number represents.  
12 MR. TAMBE: Objection to the form  
13 of the question.  
14 A. I don't know specifically what it  
15 represents. I infer that it was intended to  
16 represent the value of the securities that  
17 were transferred in the deal.  
18 Q. What's your basis for that answer?  
19 A. I've read the transcript that this  
20 is cited from at some point previously. It's  
21 been a little while since I've read that  
22 specifically but that's what I remember in  
23 terms of my impression as I read it.  
24 Q. Have you -- what efforts did you  
25 make to be able to describe the \$47.4 billion

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 September 19th sale hearing?  
3 A. I'm sorry. What is our  
4 understanding of that figure?  
5 Q. Yes. And what it is, what it  
6 represents.  
7 A. Alvarez -- I don't believe Alvarez  
8 has any understanding of how that number  
9 derives or how it was determined at that time.  
10 Q. How about LBHI? What is its  
11 understanding?  
12 A. I've not seen any discovery speak  
13 to how this number was derived in the course  
14 of anything I've seen. So while I could give  
15 my standard answer as it relates to LBHI and  
16 say that that could best be gleaned from  
17 speaking to people who have since moved over  
18 to Barclays, I haven't seen anything in  
19 discovery that would speak to that specific  
20 knowledge of that number.  
21 Q. So you have no idea as you sit  
22 here today what that number represents?  
23 MR. TAMBE: Objection to the form  
24 of the question.  
25 A. I don't know if I would say no

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 figure for purposes of the deposition?  
3 A. I would say there were efforts  
4 throughout the Rule 2004 discovery to  
5 understand specifically how that number was  
6 derived. To my knowledge, there was no  
7 evidence that I'm aware of that would suggest  
8 specifically how that number was derived.  
9 Q. So for purposes of the deposition  
10 in your preparation for the deposition did you  
11 take any steps to try to find out how that  
12 number was derived or what it represented?  
13 MR. TAMBE: Objection to the form  
14 of the question. And asked and  
15 answered.  
16 A. Specific to the deposition I would  
17 have confirmed in my mind through discussions  
18 with others that we don't have any basis for  
19 understanding how that number was derived. I  
20 don't know what else to say. We don't  
21 under -- we don't have a specific  
22 understanding of how that number was derived.  
23 Q. Okay. Did you pick up the phone  
24 and call someone and ask them about that  
25 number?

<p style="text-align: right;">Page 62</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I've had conversations throughout</p> <p>3 the course of my work on this matter on that</p> <p>4 and many other subjects and I have never</p> <p>5 gained any understanding that we knew how that</p> <p>6 number was derived.</p> <p>7 Q. Same question with respect to the</p> <p>8 \$45.5 billion figure. Do you know what that</p> <p>9 number represents?</p> <p>10 MR. TAMBE: Object to form.</p> <p>11 A. Same answer.</p> <p>12 Q. Who was providing information</p> <p>13 about the values of assets being sold to Weil</p> <p>14 Gotshal during the week the sales transaction</p> <p>15 was being negotiated?</p> <p>16 A. I don't know specifically. I</p> <p>17 think that question would be directed toward</p> <p>18 the Weil Gotshal witnesses.</p> <p>19 Q. Would you agree that it was</p> <p>20 probably someone at Lehman or Alvarez or</p> <p>21 Lazard or do you know who was interfacing with</p> <p>22 Weil Gotshal during that week?</p> <p>23 A. Could have been any of those.</p> <p>24 Could have been somebody who was a Barclays</p> <p>25 employee. I don't know specifically where</p>	<p style="text-align: right;">Page 63</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 they got the information.</p> <p>3 Q. Do you have any knowledge of a</p> <p>4 Barclays employee talking with Weil Gotshal</p> <p>5 about valuations of Lehman products?</p> <p>6 A. No, I don't.</p> <p>7 Q. By the way, at any time you want</p> <p>8 to take a break, just speak up. I'm happy to</p> <p>9 do so.</p> <p>10 MR. TAMBE: If you're at a natural</p> <p>11 breaking point if we could take a break.</p> <p>12 MR. THOMAS: Sure.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 10:43. We are going off the record.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 10:53. We are back on the record.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q. If I could ask you to turn to page</p> <p>20 11 of Exhibit 1, please.</p> <p>21 A. (Witness complies.)</p> <p>22 Q. And look at Section 2.3, the</p> <p>23 Assumption of Liabilities. And do you see</p> <p>24 that there's a number of liabilities listed</p> <p>25 there?</p>
<p style="text-align: right;">Page 64</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Did -- can you tell me LBHI's</p> <p>4 understanding of the value of any of those</p> <p>5 liabilities as of September 17th?</p> <p>6 A. As of September 17th the people</p> <p>7 who I understand at LBHI would have been</p> <p>8 knowledgeable of this have generally moved</p> <p>9 over to Barclays.</p> <p>10 Q. Okay. And I think I know the</p> <p>11 answer but you haven't gone to the Lehman</p> <p>12 documents and tried to identify any values of</p> <p>13 these liabilities; is that correct?</p> <p>14 MR. TAMBE: Object to the form of</p> <p>15 the question.</p> <p>16 A. I've reviewed a substantial amount</p> <p>17 of the material produced in this case but I</p> <p>18 haven't tried to line out item by item here</p> <p>19 what the value of those liabilities was at</p> <p>20 that time.</p> <p>21 Q. So sitting here today you can't</p> <p>22 tell me LBHI's understanding of these</p> <p>23 liabilities at any point prior to closing?</p> <p>24 MR. TAMBE: Objection to the form</p> <p>25 of the question. That's not his</p>	<p style="text-align: right;">Page 65</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 testimony.</p> <p>3 A. Again, I think LBHI's</p> <p>4 understanding would best be gained from</p> <p>5 speaking to people who were involved in the</p> <p>6 deal and understood the books and records.</p> <p>7 Q. I understand that's your position.</p> <p>8 And just to save you from having to repeat</p> <p>9 that, putting that aside, based upon what you</p> <p>10 did do to try to prepare for the deposition in</p> <p>11 terms of speaking with people still at LBHI,</p> <p>12 speaking with counsel if they provided you</p> <p>13 information, speaking with anyone else who</p> <p>14 provided you information, or on reviewing</p> <p>15 documents at Lehman that would have</p> <p>16 information concerning this, based on any of</p> <p>17 that, can you tell me LBHI's understanding of</p> <p>18 the value of these liabilities prior to</p> <p>19 closing?</p> <p>20 MR. TAMBE: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I'm not sure I can speak to LBHI's</p> <p>23 knowledge of the value of these liabilities as</p> <p>24 of September 17th. Again, I've seen various</p> <p>25 documents produced in the course of the</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 discovery in this matter that may speak to  
3 some of this. But that's in the record of  
4 this matter as we sit here.  
5 Q. Okay. So -- and you said as of  
6 September 17th, and that's true for any time  
7 through closing?  
8 A. Yes.  
9 Q. Did Alvarez have any understanding  
10 of these liabilities during that period of  
11 time?  
12 A. During that period of time, no.  
13 Q. And we'll come back in a later  
14 topic to later points in time.  
15 All right. Let's -- can you point  
16 me to any particular documents that would show  
17 what LBHI thought was the value of any of  
18 these liabilities the week of September 17th  
19 up to closing?  
20 A. I know there have been various  
21 balance sheet data produced in the -- in this  
22 matter that would speak to the reported book  
23 value of those liabilities.  
24 Q. Can you identify any?  
25 MR. TAMBE: Objection to form.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. In or about January 2009.  
3 Q. Do you know when the first time  
4 anyone at Alvarez reviewed this document?  
5 A. Not specifically. I can say that  
6 Alvarez as a whole didn't undertake a  
7 comprehensive review of the transaction until  
8 January of 2009.  
9 Q. Well, putting aside the qualifier  
10 of comprehensive review, do you know when  
11 anyone at Alvarez first saw this document?  
12 A. When anyone at Alvarez first saw  
13 it.  
14 Q. This document, yes.  
15 A. I don't think I could tell you  
16 when anybody at Alvarez first saw this  
17 document.  
18 Q. Okay. Is it your understanding  
19 that the -- this document, we'll call it the  
20 clarification letter, conveys to Barclays all  
21 of the collateral associated with the fed  
22 repo?  
23 MR. TAMBE: Objection.  
24 Q. Let me stop you. Do you know what  
25 I mean when I refer to the fed repo?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. Not beyond the general description  
3 of various balance sheet data I've seen in the  
4 course of reviewing the material --  
5 Q. Okay.  
6 A. -- in this case.  
7 Q. Do you know how those values were  
8 derived?  
9 A. Not specifically. I understand  
10 accounting and I understand how liabilities  
11 are generally recorded and on what basis.  
12 Q. Let me show you a document that's  
13 been previously marked as Exhibit 25. Are you  
14 familiar with that document?  
15 (Document review.)  
16 MR. TAMBE: Just give him a  
17 moment.  
18 A. Yes.  
19 Q. Could you describe what you  
20 understand it to be, please.  
21 A. It's what's been generally  
22 referred to in this matter as the  
23 clarification letter.  
24 Q. And when was the first time you  
25 saw this document?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. The fed repo that was in place on  
3 the 17th and then Barclays stepped into that  
4 on the 18th?  
5 Q. Correct.  
6 A. Yes.  
7 Q. Okay. If I refer to the fed repo  
8 we're on the same page?  
9 To your understanding the  
10 clarification letter transferred all of the  
11 collateral associated with the fed repo to  
12 Barclays.  
13 MR. TAMBE: Objection to the form  
14 of the question.  
15 A. I agree that that was the intent  
16 of the letter. Among other items, of course.  
17 Q. And is your qualification because  
18 some of the collateral actually didn't get  
19 transferred?  
20 A. That's not what I had in mind.  
21 I'm disagreeing with your assertion.  
22 Q. Sure. Sure.  
23 So as of closing, presumably LBHI  
24 would have understood that the fed repo  
25 collateral was being transferred to Barclays,

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 correct?  
3 MR. TAMBE: Objection to the form  
4 of the question.  
5 A. LBHI would have understood that,  
6 yes.  
7 Q. When did Alvarez first come to  
8 understand that?  
9 A. I think that a few days after the  
10 closing as we began to gather data again as to  
11 the specific securities that were transferred  
12 to Barclays in connection with the deal, we  
13 became aware that they were transferred  
14 pursuant to a repo agreement based on the  
15 documents that I've seen. So there was  
16 knowledge of the repo deal and its connection  
17 to the transfer of the securities in the days  
18 after the closing.  
19 Q. Okay. Are you familiar with the  
20 term "haircut"?  
21 A. Yes.  
22 Q. In the context of a repo or a  
23 repurchase agreement, what do you understand  
24 that term to mean?  
25 A. A haircut is a --

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 his understanding may be of the repos  
3 used in this context or the repo in this  
4 transaction. It may go to some of your  
5 valuation questions.  
6 MR. THOMAS: I think it's within  
7 because you've used that term in  
8 connection with collateral repo,  
9 collateral, and it's hard to examine the  
10 witness without having the same  
11 understanding of what the term is.  
12 MR. TAMBE: With your  
13 characterization I'm going to let him  
14 answer the question. I do think it's  
15 beyond the scope of the 30(b)(6).  
16 MR. THOMAS: Okay.  
17 MR. TAMBE: If you have the  
18 question in mind.  
19 THE WITNESS: I do not.  
20 BY MR. THOMAS:  
21 Q. Okay. And I'm just asking. Is  
22 your understanding of the term haircut that  
23 it's the amount by which the value of the  
24 collateral exceeds the loan amount?  
25 MR. TAMBE: I'll object to the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 MR. TAMBE: Just objection to the  
3 extent it goes beyond the scope of the  
4 30(b)(6). You can answer the question.  
5 A. I understand a haircut to be a  
6 negotiated item between two parties engaged in  
7 a repurchase agreement which is intended to  
8 compensate for the risk of default to one of  
9 the parties of the deal.  
10 Q. Is it the amount of collateral  
11 value in excess of the loan amount?  
12 MR. TAMBE: Objection to the form  
13 of the question. Is there a specific  
14 topic in the 30(b)(6) this question is  
15 aimed at?  
16 MR. THOMAS: Sure. This is part  
17 of the repo. It's something that you  
18 described as a haircut in documents so  
19 I'm not sure what you're talking about.  
20 MR. TAMBE: At least to the extent  
21 you're asking him generally about the  
22 workings of repo and how repo  
23 transactions are supposed to work, I  
24 think that's not what this witness is  
25 here for. You can ask him about what

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 form of the question. You can answer.  
3 A. Yes. I would agree with that  
4 characterization. Value as ascribed by the  
5 repo agent.  
6 Q. And is that a common term in this  
7 industry, haircut?  
8 A. Yes. I think it is.  
9 Q. So people generally at Alvarez  
10 would understand what that term means?  
11 A. Depending on their particular  
12 industry focus I believe people would  
13 understand, you know, the nature of the term.  
14 Q. Okay. Let me show you another  
15 document we'll mark as 459A.  
16 (Deposition Exhibit 459A, document  
17 bearing production numbers WGM-LEHMAN-E  
18 00005736 through WGM-LEHMAN-E 00005740,  
19 marked for identification as of this  
20 date.)  
21 BY MR. THOMAS:  
22 Q. And I'm not going to ask you about  
23 the whole chain but if at any point you feel  
24 you need to review it you're certainly welcome  
25 to. But I could start by asking you if you

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 recall ever seeing this document before.

3 A. Not that I recall.

4 Q. Okay. You'll see it's an e-mail  
5 dated September 21st, 2008 from Robert  
6 Messineo to Catherine Muller.

7 Do you see that?

8 A. Yes.

9 Q. Is Catherine Muller someone who  
10 still works at Lehman?

11 A. She may have been one of the  
12 people you asked me about. If I'm thinking of  
13 the same person, I believe she may be with the  
14 estate currently, yes.

15 Q. Okay. How about Emma Bailey, is  
16 she still with the estate?

17 A. I don't know.

18 Q. Kevin Genirs? Do you know if  
19 Kevin is still with the estate?

20 A. I've seen the name. But I don't  
21 recall specifically if he's with the estate or  
22 not.

23 Q. And if you look at -- on the first  
24 page the first indented paragraph the second  
25 sentence of that says, "Beyond the text of the

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2 Asset Purchase Agreement no further schedule  
3 of the assets to be included as contemplated  
4 apart from a listing of traded securities  
5 positions. With regard to traded securities,  
6 all the securities that were collateral for  
7 the September 18th repurchase agreement with  
8 Barclays are expected to be included. We  
9 received from Lehman a listing of many dozens  
10 of pages of these securities."

11 Do you see that?

12 A. Yes.

13 Q. Is this consistent with your  
14 understanding that Lehman was aware that as  
15 part of the sale transaction all of the fed  
16 repo collateral was being transferred to  
17 Barclays?

18 A. Yes. I think that's consistent.

19 Q. Do you have any understanding of  
20 Ms. Muller's or Ms. Bailey's or Mr. Genirs'  
21 involvement on the sale transaction?

22 A. Not specifically. I acknowledge  
23 this e-mail has them on it but I don't recall  
24 seeing them generally in the material I've  
25 reviewed in connection with the matter.

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2 Q. And you haven't spoken with any of  
3 those individuals for purposes of today's  
4 deposition, correct?

5 A. No, I've not.

6 Q. Let me go ahead and show you  
7 another document we'll mark as Exhibit 460A.

8 (Deposition Exhibit 460A, document  
9 bearing production number  
10 LAZ-C-00048526, marked for  
11 identification as of this date.)

12 BY MR. THOMAS:

13 Q. Would you please take a moment to  
14 review that document.

15 (Document review.)

16 A. Okay.

17 Q. Do you recall seeing this document  
18 before?

19 A. I believe that I have, yes.

20 Q. And can you tell me when you saw  
21 it?

22 A. I think it was fairly recently  
23 given that I recall it. Within the last few  
24 days.

25 Q. Was it in connection with your

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 preparation for the deposition?

3 MR. TAMBE: Object to the form of  
4 the question. And instruct you not to  
5 answer to the extent you had discussions  
6 with counsel about the document. You  
7 can ask him about the document without  
8 getting into his preparation with  
9 counsel.

10 MR. THOMAS: I understand. I just  
11 want to know if it was something other  
12 than in preparation for the deposition.

13 Q. So I'm just asking yes or no was  
14 it in connection with preparation for the  
15 deposition. If the answer is no then I'm  
16 going to ask you about.

17 A. My best recollection is that it  
18 was in connection with the preparation.

19 Q. Okay. Do you know who Arthur  
20 Bruhmuller is?

21 A. I've seen the name. Obviously  
22 he's connected to Lazard according to the  
23 e-mail but I don't specifically know him.

24 Q. Do you have an understanding of  
25 Lazard's role at this point, September 17th,

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 2008?  
3 A. Yes.  
4 Q. And what was that role?  
5 A. I understand that they were  
6 brought on as investment banking advisors in  
7 connection with the deal on behalf of the  
8 Lehman entities.  
9 Q. They advised Lehman concerning the  
10 sales transaction with Barclays?  
11 A. Yes. That was their role  
12 generally, yes.  
13 Q. And do you know who Daniel Flores  
14 is?  
15 A. Not specifically, no.  
16 Q. Do you know if they're  
17 specifically at Lehman or whether they came  
18 over to Barclays?  
19 A. I do not know.  
20 Q. How about Gerard Reilly who's the  
21 author of a lower-down e-mail? Do you know  
22 who that is?  
23 A. Yes, I know -- I understand who he  
24 was, who he is in the context of our review of  
25 the material.

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2 Q. I appreciate that but I'm going to  
3 go ahead and ask you just to your knowledge as  
4 a corporate representative on these topics for  
5 LBHI and Alvarez what you know, okay?  
6 And based on what you know and  
7 what you found out for this deposition, what  
8 efforts were made to get a sense for how the  
9 marks evolved since Friday, September 12th,  
10 2008.  
11 A. The knowledge I have of Lazard  
12 beyond just the raw documents that have been  
13 produced in this case derive from a  
14 conversation that I was involved in with  
15 Lazard representatives that included Jones  
16 Day.  
17 Q. So your knowledge --  
18 MR. THOMAS: So are you  
19 instructing the witness not to describe  
20 the discussion and knowledge?  
21 MR. TAMBE: Why don't you phrase  
22 the question you're going to want to ask  
23 him. I may want to talk to him about  
24 the conversation he has in mind to  
25 decide whether or not there will be a

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Okay. The top of the e-mail from  
3 Lazard reads, "We are trying to get a sense of  
4 how marks have evolved since Friday."  
5 Do you see that?  
6 A. Yes.  
7 Q. Do you understand that to be  
8 referring to Lehman Brothers securities which  
9 would at least include the ones referenced as  
10 being approximately \$70 billion worth in the  
11 initial APA?  
12 MR. TAMBE: Objection to the form  
13 of the question.  
14 A. I view that as a reasonable  
15 inference, yes.  
16 Q. Okay. Are you aware -- can you  
17 describe what efforts were made by LBHI and  
18 Lazard prior to the sale -- prior to the  
19 closing of the sale transaction to "get a  
20 sense for how marks have evolved" since  
21 Friday, September 12th?  
22 A. I believe that question would best  
23 be directed toward Lazard or its  
24 representatives as well as the LBHI employees  
25 who moved over to Barclays.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 privilege invocation.  
3 Q. What did you learn about Lazard's  
4 efforts or LBHI's efforts to get a better  
5 sense for how the marks, Lehman's marks, had  
6 evolved since Friday, September 12th from that  
7 conversation with Lazard?  
8 MR. TAMBE: Objection to the form  
9 of that question. I'm going to consult  
10 with the witness just about the content  
11 of that conversation and see if there is  
12 a privilege concern here.  
13 MR. THOMAS: Sure.  
14 THE VIDEOGRAPHER: The time is  
15 11:16. We are going off the record.  
16 (Conference between counsel and  
17 witness.)  
18 THE VIDEOGRAPHER: The time is  
19 11:19. We are back on the record.  
20 MR. TAMBE: We are going to assert  
21 privilege over sort of the contents of  
22 that meeting but the witness is prepared  
23 to tell you his general understanding of  
24 Lazard's role on this topic that you're  
25 generally asking about which is the

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2 marks and the valuation.  
3 BY MR. THOMAS:  
4 Q. Okay. What was -- what did Lazard  
5 do that week to try to get a better sense of  
6 how the marks had evolved from Friday,  
7 September 12th, 2008?  
8 A. My general understanding is that  
9 Barry Ridings and perhaps others from Lazard  
10 were observing the course of the activities as  
11 a deal was being negotiated on I believe the  
12 30th floor at the 745 building. And observed  
13 various meetings amongst certain of the  
14 parties that were involved. You know, based  
15 on the record I've seen, very unclear to me  
16 the degree to which they were able to  
17 ultimately fully understand and appreciate how  
18 Hugh the marks evolved as it's characterized  
19 here in this e-mail.  
20 Q. When you say observing the course  
21 of the activities, what are you referring to  
22 in particular?  
23 A. Observing the conduct of the  
24 people talking to each other in the course of  
25 the negotiations. Just being in various

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Yes.  
3 A. Okay. I don't think I have a  
4 specific understanding as I sit here of that.  
5 I think it's perhaps something we've looked  
6 into but I don't -- as I sit here I don't  
7 think I can tell you a specific relationship.  
8 Q. Have you seen assertions in some  
9 of the Rule 60 motions that those marks were  
10 valued at closer to 75 billion on Friday,  
11 September 12th?  
12 A. The assertions I've seen are not  
13 specific to the date. I generally understood  
14 the assertions to be contemporaneous with the  
15 day that they were being talked about.  
16 Q. Well, after the Lehman bankruptcy,  
17 after -- what knowledge do you have as to  
18 whether there was any efforts -- strike that.  
19 What efforts are you aware of to  
20 mark those long securities, that is to put a  
21 value on them, after September 12th, 2008?  
22 MR. TAMBE: Objection to the form  
23 of the question.  
24 A. I'm sorry. Would you please  
25 repeat that?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 meetings, various rooms, as multiple aspects  
3 of the transaction were being discussed. I  
4 don't have much specifics beyond that. I  
5 really think the question is ultimately best  
6 directed of course to Lazard representatives.  
7 Q. Is it your understanding that the  
8 long positions referenced in the APA, the  
9 original APA, had a total approximate value --  
10 or strike that.  
11 What is your understanding of what  
12 the long positions value was marked as on  
13 Lehman's books as of September -- Friday,  
14 September 12th, 2008?  
15 MR. TAMBE: Objection to the form  
16 of the question.  
17 A. The long positions that are  
18 contemplated in the 9/16 APA?  
19 Q. Yes.  
20 A. Stated in the APA at \$70 billion,  
21 roughly.  
22 Q. Approximately.  
23 A. And you're asking me about my  
24 knowledge of the value of those securities on  
25 September 12th?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Sure. What efforts are you aware  
3 of to value the long positions, Lehman's long  
4 positions, after September 12th and prior to  
5 closing?  
6 MR. TAMBE: Objection to form.  
7 A. Well, the -- I understand that  
8 they were -- Lehman was continuing to operate  
9 as close as they could to business as usual,  
10 understanding, of course, under the  
11 circumstances there were I'm sure a lot of  
12 challenges there given that the parent company  
13 had filed for bankruptcy on the morning of the  
14 15th. And, you know, the efforts I understand  
15 were continuing to value securities in the  
16 course of that week.  
17 Q. And who was continuing to value  
18 securities during the course of the week?  
19 A. I can't speak specifically. I've  
20 heard -- Ian Lowitt, as you're probably aware,  
21 testified in his deposition that he believed  
22 the marks were accurate as of the dates that  
23 they were stated in Lehman's books during that  
24 week.  
25 Q. Other than Ian Lowitt's deposition

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 testimony do you have any other basis for</p> <p>3 knowing whether the marks were accurate or</p> <p>4 whether they were being kept up to date during</p> <p>5 that week?</p> <p>6 MR. TAMBE: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Well, as I stated, I have a</p> <p>9 general understanding that there were ongoing</p> <p>10 efforts to run the business as usual. And to</p> <p>11 me that would entail doing what they typically</p> <p>12 did as marking their books on a daily basis</p> <p>13 for the trading assets.</p> <p>14 Q. Okay. Other -- what is your basis</p> <p>15 for that understanding that they were marking</p> <p>16 their books? Do you have any other basis for</p> <p>17 that understanding that they were continuing</p> <p>18 to mark their books after declaring bankruptcy</p> <p>19 other than Ian Lowitt's deposition testimony?</p> <p>20 A. Well, they would have been -- the</p> <p>21 securities would have been marked</p> <p>22 independently by Lehman and also by the</p> <p>23 clearing agent. In this case JPMorgan Chase.</p> <p>24 They have their own independent way in which</p> <p>25 they valued securities that didn't necessarily</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 equate to Lehman's practices. So there were</p> <p>3 ongoing -- as I understand it, ongoing efforts</p> <p>4 to keep contemporaneous marks on these</p> <p>5 securities.</p> <p>6 Q. Let's focus on Lehman's efforts to</p> <p>7 mark its securities after September 12th,</p> <p>8 2008. Other than Mr. Lowitt's deposition</p> <p>9 testimony, do you have any basis for knowing</p> <p>10 that Lehman did, in fact, continue to try to</p> <p>11 mark those on a daily basis?</p> <p>12 A. As I stated, I have a general</p> <p>13 understanding that they were continuing to</p> <p>14 attempt to operate business as usual,</p> <p>15 recognizing that there were likely challenges</p> <p>16 in that environment. I'm aware that there</p> <p>17 were these contemporaneous valuations being</p> <p>18 done by the clearing agent. And I have a</p> <p>19 general understanding that those valuations</p> <p>20 continued to dovetail relatively closely to</p> <p>21 what Lehman was marking the positions at at</p> <p>22 that time. Based on that totality of</p> <p>23 information I surmised that there were</p> <p>24 continuing attempts to value the securities</p> <p>25 during that week.</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you have knowledge of what</p> <p>3 Lehman was marking the securities as of that</p> <p>4 week? Of long positions?</p> <p>5 MR. TAMBE: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Not specifically beyond what I've</p> <p>8 just stated.</p> <p>9 Q. Do you have any understanding</p> <p>10 whether the long positions -- there would be a</p> <p>11 difference in the market value of the long</p> <p>12 positions between September 12th and September</p> <p>13 16th?</p> <p>14 A. I'm sorry?</p> <p>15 Q. Do you have any understanding of</p> <p>16 whether there was a difference or would have</p> <p>17 been a difference between the long positions'</p> <p>18 value on September 12th, 2008 versus September</p> <p>19 16th, 2008?</p> <p>20 MR. TAMBE: Objection to form.</p> <p>21 A. Well, there would have been</p> <p>22 differences just by virtue of any fluctuations</p> <p>23 in the market, of course. And you also -- I</p> <p>24 think it's relevant to recognize that the</p> <p>25 make-up of the securities likely would have</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 been different to some degree between those</p> <p>3 two dates. This is an ongoing operation where</p> <p>4 securities move in and out, et cetera.</p> <p>5 Q. Is it fair to say in those</p> <p>6 particular days in that market with Lehman</p> <p>7 declaring bankruptcy that the fluctuations</p> <p>8 would have been downward as of between</p> <p>9 September 12th and September 16th?</p> <p>10 MR. TAMBE: Objection to the form</p> <p>11 of the question. And objection to the</p> <p>12 extent it extends beyond the scope of</p> <p>13 the 30(b)(6). The witness can answer.</p> <p>14 A. Probably depends on the nature of</p> <p>15 the security. Treasuries may have been more</p> <p>16 highly valued. Very low risk securities or</p> <p>17 securities perceived to be low risk might</p> <p>18 have, in fact, increased in value during that</p> <p>19 week given the flight to safety, so to speak,</p> <p>20 that was occurring. Securities viewed as</p> <p>21 being more risky, it's reasonable to assume</p> <p>22 that they would have been going down in value.</p> <p>23 Q. Overall, do you have a sense of</p> <p>24 whether the values would have gone up or down</p> <p>25 from September 12th to September 16th?</p>



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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection.</p> <p>3 Q. The total value of the long</p> <p>4 positions.</p> <p>5 MR. TAMBE: Object to the form of</p> <p>6 the question.</p> <p>7 A. I don't know if I can speak</p> <p>8 specifically to it. Although, certainly my</p> <p>9 general recollection of the material I've seen</p> <p>10 would suggest that overall the values were</p> <p>11 going down.</p> <p>12 Q. So you would expect the overall</p> <p>13 value of Lehman's long positions as of</p> <p>14 Tuesday, September 16th, to be lower than they</p> <p>15 were on Friday, September 12th; is that fair?</p> <p>16 MR. ROTHMAN: Objection to the</p> <p>17 form.</p> <p>18 A. Difficult to generalize. And I</p> <p>19 don't have any specific data in mind. But,</p> <p>20 again, depending on the nature of the security</p> <p>21 and the makeup of the portfolio that</p> <p>22 fluctuation very well may have been down</p> <p>23 overall.</p> <p>24 Q. Now, do you have any information,</p> <p>25 hard information, has anyone to your knowledge</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 studied that issue, comparing the values of</p> <p>3 the longs from September 12th, 2008 to</p> <p>4 September 16th, 2008?</p> <p>5 MR. TAMBE: Objection to the form</p> <p>6 of the question. And objection to the</p> <p>7 extent that it asks the witness to</p> <p>8 disclose what may be work product</p> <p>9 protected analysis.</p> <p>10 A. Any work that A&amp;M has done in</p> <p>11 connection with the general subject of</p> <p>12 valuation of securities has been done at</p> <p>13 direction of counsel.</p> <p>14 Q. Okay. So let me just go and ask.</p> <p>15 Can you tell me what the value of the longs</p> <p>16 were on September 16th based upon anything</p> <p>17 Alvarez or LBHI has done?</p> <p>18 MR. TAMBE: Same objection.</p> <p>19 A. The value of the longs at</p> <p>20 September 16th. I think you -- it might be</p> <p>21 helpful to reflect on the context here. I'm</p> <p>22 not even sure anybody, as far as I'm aware,</p> <p>23 can tell you specifically CUSIP by CUSIP what</p> <p>24 these securities were. It was a general --</p> <p>25 there were general attempts to identify the</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 available securities that could have gone in a</p> <p>3 transaction at that date under extraordinarily</p> <p>4 difficult circumstances. I'm not even aware</p> <p>5 of a list that would enable anybody to depict</p> <p>6 this value at that date.</p> <p>7 Q. A lot of the assets were illiquid.</p> <p>8 A lot of the long positions of Lehman's were</p> <p>9 illiquid; is that fair?</p> <p>10 MR. TAMBE: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't know -- perhaps we would</p> <p>13 have to agree on what illiquid means in this</p> <p>14 context.</p> <p>15 Q. That's not a term --</p> <p>16 A. Obviously any asset is salable</p> <p>17 under the right circumstances.</p> <p>18 Q. Were there any assets -- were any</p> <p>19 of the LBHI assets what you would consider to</p> <p>20 be illiquid the assets in the long positions?</p> <p>21 A. Were any of the assets in the long</p> <p>22 positions illiquid?</p> <p>23 MR. TAMBE: Objection to the form</p> <p>24 of the question. And beyond the scope</p> <p>25 of the 30(b)(6).</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Are you familiar with the term</p> <p>3 illiquid?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you contest that some of</p> <p>6 LBHI's assets were illiquid and therefore</p> <p>7 difficult to value during this time period of</p> <p>8 the sale transaction?</p> <p>9 A. Perhaps it would help if we</p> <p>10 agree -- if I understand what your definition</p> <p>11 of illiquid is. You know, illiquid is a</p> <p>12 very -- I take it as a term that could have a</p> <p>13 lot of different meanings to different people.</p> <p>14 Q. Well, why don't you give me your</p> <p>15 definition and we'll go with that.</p> <p>16 A. I don't have a definition. I'm</p> <p>17 not asking the question.</p> <p>18 Q. Difficult to sell and therefore</p> <p>19 difficult to value?</p> <p>20 A. No question. There are various</p> <p>21 types of securities that are easier to sell,</p> <p>22 have a more active market than others. I</p> <p>23 accept that premise, yes.</p> <p>24 Q. And were LBHI's securities</p> <p>25 difficult to value?</p>

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection to the form</p> <p>3 of the question.</p> <p>4 Q. As of September 16th, 2008?</p> <p>5 MR. TAMBE: Same objection.</p> <p>6 A. I don't think I would accept that</p> <p>7 characterization, no.</p> <p>8 Q. Have you read Mr. McDade's</p> <p>9 deposition testimony?</p> <p>10 A. Yes, I have.</p> <p>11 Q. Okay. Let me go back to the</p> <p>12 current document which is 460A. Are you</p> <p>13 familiar with the Lehman GPS system?</p> <p>14 A. Yes.</p> <p>15 Q. Would you describe what it is,</p> <p>16 please?</p> <p>17 MR. TAMBE: Object to the form of</p> <p>18 the question but you can answer.</p> <p>19 A. It's one of the systems -- and I</p> <p>20 equate it in my mind sitting here today as the</p> <p>21 system that was used to obtain valuations in</p> <p>22 the context of the ordinary course of</p> <p>23 business. I don't have full functionality in</p> <p>24 mind as I sit here although I've known that at</p> <p>25 other times better than as I sit here.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Other than Ian Lowitt who was</p> <p>3 involved in marking Lehman's securities?</p> <p>4 MR. TAMBE: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Presumably there were numerous</p> <p>7 people involved in that.</p> <p>8 Q. Did you speak with anyone from</p> <p>9 Lazard in preparation for your deposition?</p> <p>10 A. No. Not in preparation for my</p> <p>11 deposition.</p> <p>12 Q. The e-mail from Mr. Bruhmuller is,</p> <p>13 "I think the first priority would be to see</p> <p>14 the inventory of what's being sold, how the</p> <p>15 marks have evolved, and info on the buyer</p> <p>16 'discount'."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any understanding of</p> <p>20 what he's referring to by the buyer discount?</p> <p>21 MR. TAMBE: Object to the form of</p> <p>22 the question.</p> <p>23 A. Not specifically, no.</p> <p>24 Q. Generally?</p> <p>25 A. Well, generally, I'm aware in the</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 case that there was a characterization by many</p> <p>3 that there was a bulk sale discount being</p> <p>4 ascribed in the context of the deal.</p> <p>5 Q. Other than your reading of case</p> <p>6 materials, do you have any understanding of</p> <p>7 what that discount referred to?</p> <p>8 A. No.</p> <p>9 Q. LBHI under -- well, strike that.</p> <p>10 Could you be more specific in what</p> <p>11 you understand the buyer discount to refer to?</p> <p>12 MR. TAMBE: Object to the form of</p> <p>13 the question.</p> <p>14 A. More specific on what the buyer</p> <p>15 discount refers to?</p> <p>16 Q. Yes.</p> <p>17 A. Not beyond what I've just said. I</p> <p>18 don't think so.</p> <p>19 Q. It's based on buying in bulk; is</p> <p>20 that what your understanding was?</p> <p>21 MR. TAMBE: Objection to the form</p> <p>22 of the question.</p> <p>23 MR. THOMAS: I'm just repeating</p> <p>24 back his answer.</p> <p>25 MR. TAMBE: It's asked and</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 answered. But are you asking him what</p> <p>3 he thinks the author meant by this</p> <p>4 phrase? Or what those words mean to</p> <p>5 him?</p> <p>6 MR. THOMAS: No. His</p> <p>7 understanding.</p> <p>8 MR. TAMBE: Okay.</p> <p>9 A. When I use the term bulk sale</p> <p>10 discount I'm using a phrase I've heard or</p> <p>11 paraphrasing a phrase I've heard in the course</p> <p>12 of the discovery in this matter. I think what</p> <p>13 people intended that to mean can best be</p> <p>14 directed toward the people who are using it in</p> <p>15 this context.</p> <p>16 Q. Are you aware that Barclays'</p> <p>17 representatives in the sale negotiations took</p> <p>18 issue with some of the valuations of the</p> <p>19 Lehman marks?</p> <p>20 A. I'm familiar with the testimony</p> <p>21 around that subject, yes.</p> <p>22 Q. Let's turn to the valuation not of</p> <p>23 the original assets but of the collateral</p> <p>24 associated with the fed repo. Has Alvarez</p> <p>25 ever attempted to value the fed repo</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 collateral?  
3 MR. TAMBE: Objection to the form  
4 of the question.  
5 A. At the risk of being repetitive,  
6 anything we'd done in the context of valuation  
7 of the securities had been done under  
8 direction of counsel and I believe would be  
9 covered by the privilege.  
10 Q. Okay. So if I ask Alvarez's  
11 understanding -- its understanding as to what  
12 the value of the fed repo collateral was, I'm  
13 going to get an instruction not to answer. So  
14 that's the question.  
15 MR. TAMBE: Let me be clear. If  
16 you're asking if A&M has derived at or  
17 explored an independent valuation of  
18 that collateral, yes, you would get an  
19 objection and instruction not to answer.  
20 If you ask questions as to their  
21 understanding of what values may have  
22 been ascribed by others including  
23 Barclays to do that collateral, you can  
24 get at it that way.  
25 MR. THOMAS: No, no. I just want

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 BY MR. THOMAS:  
3 Q. Okay. As you sit here today can  
4 you tell me what you believe the value of the  
5 fed repo value was as of the closing?  
6 MR. TAMBE: And subject to my  
7 objection you can answer the question.  
8 A. So I want to be careful to make  
9 sure I understand exactly what you're asking.  
10 My current understanding of the value of the  
11 collateral?  
12 Q. Yes.  
13 A. My current understanding is  
14 based -- to the degree I have an  
15 understanding -- on work done under the  
16 direction of counsel.  
17 Q. Did Alvarez ever have an  
18 understanding of the value of the repo  
19 collateral prior to its work that's being  
20 claimed as work product?  
21 MR. TAMBE: Objection to the form  
22 of the question for the reasons stated  
23 below as to what you mean by  
24 understanding.  
25 A. Does Alvarez -- I'm sorry. I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 to confirm that you're not going to let  
3 the witness say what Alvarez's or LBHI's  
4 understanding of the value of the fed  
5 repo collateral is because it's based on  
6 work product.  
7 MR. TAMBE: No. And that's why I  
8 said what I did. That's not what I'm  
9 saying. If you're asking the witness to  
10 describe or state the basis for A&M's  
11 understanding or Lehman's understanding  
12 of the valuation of the assets, to the  
13 extent there's an understanding based on  
14 values ascribed by others including  
15 Barclays after the closing of the  
16 transaction, there's a basis for that  
17 understanding and I'll let the witness  
18 testify about what his understanding is  
19 about that.  
20 To the extent your question is  
21 have you independently, has LBHI or A&M  
22 independently post-closing done a  
23 valuation exercise of that collateral,  
24 that I am going to object to and say  
25 that is work product.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 just -- I'm trying to be careful as to what  
3 you're asking.  
4 Q. Okay. The claim is that your  
5 current knowledge of the value of the fed repo  
6 collateral is privileged work product.  
7 MR. TAMBE: No, that's not the  
8 position and that's why we're running  
9 into trouble here. You can have an  
10 understanding as to --  
11 MR. THOMAS: No, I asked him what  
12 his current understanding was and he  
13 said --  
14 MR. TAMBE: And there was an  
15 objection to that question.  
16 MR. THOMAS: But he said it would  
17 have to be biased upon privilege worked.  
18 MR. TAMBE: And the reason there  
19 was an objection to that question is you  
20 seem to be trying to get at is there  
21 independent valuation done by LBHI or  
22 A&M independent of information. There's  
23 lots of information on the record about  
24 values ascribed to that collateral. On  
25 and before the closing date. That's

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 certainly within their understanding as  
3 to values ascribed by others. Okay. Go  
4 ahead.  
5 MR. THOMAS: I'm not trying to --  
6 I know there's nominal marks that exist  
7 that he might have read in a paper or  
8 something else like that. I'm asking if  
9 Alvarez, prior to -- independent of what  
10 is being claimed as work product made  
11 any effort to value that collateral, the  
12 fed repo collateral.  
13 A. No, we did not.  
14 Q. Okay. What was Alvarez's  
15 understanding as to the value of the fed  
16 collateral prior to doing this work product  
17 with counsel?  
18 A. Any understanding we had about  
19 values ascribed to the collateral would have  
20 been gained post closing and in connection  
21 with the gathering of data so that we  
22 understood the securities that were  
23 transferred in connection with the  
24 transaction.  
25 Q. And as you sit here today can you

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 feasible based on the information available to  
3 us in that first quarter of the administration  
4 of the estate.  
5 But the context was ensuring we  
6 had the data in hand while it was fresh in  
7 everybody's mind as to what was transferred in  
8 the deal.  
9 Q. Let me show you a document we'll  
10 mark as 461A.  
11 (Deposition Exhibit 461A, document  
12 bearing production numbers AM 004503  
13 through AM 004595, marked for  
14 identification as of this date.)  
15 BY MR. THOMAS:  
16 Q. Is this a document that you've  
17 seen before?  
18 A. Yes. I've seen this.  
19 Q. And when did you see it?  
20 A. When did I see it?  
21 Q. Yes.  
22 A. I would have first seen it pretty  
23 much contemporaneous with the date of this,  
24 October 8th, or the day or two before.  
25 Q. And can you describe what the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 tell me what that understanding was in terms  
3 of the amount of the fed repo collateral?  
4 A. I think it would be more  
5 appropriate or perhaps more safe, rather than  
6 having me misstate a number, I'm thinking of  
7 e-mails that I know some of the A&M people  
8 were gathering the data and I think those  
9 documents represent what our early  
10 understanding was of the ascribed values.  
11 Q. Okay. After the sale closed, what  
12 was the purpose of your trying to get an  
13 understanding of the value of the assets that  
14 had been transferred? Yours being Alvarez's.  
15 A. It was really from the perspective  
16 of capturing the data that we thought was  
17 going to be necessary for us to administer the  
18 estate and understanding what was estate  
19 assets, what was not estate assets. I think  
20 there was some thought early on that we would  
21 try to do a reconciliation of the securities  
22 that were transferred, ensure that nothing was  
23 transferred that should not have been  
24 transferred under the deal.  
25 That effort was not really

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 document is, please.  
3 A. It is a Powerpoint dec assembled  
4 by Alvarez & Marsal to report to the Unsecured  
5 Creditors Committee on this date of October  
6 8th. It was sort of a guide for communication  
7 to the Unsecured Creditors at that point.  
8 Q. And why was Alvarez & Marsal  
9 relaying this information to the Creditors  
10 Committee?  
11 A. It was in the context of the  
12 Creditors Committee is an important  
13 constituent that we serve in the  
14 administration of the estate and giving them  
15 an early download as to our activities and how  
16 we're getting ramped up and getting ready to  
17 best serve our role as a chief restructuring  
18 officer.  
19 Q. If I could ask you to turn to page  
20 28, please.  
21 A. (Witness complies.)  
22 MR. ROTHMAN: The Bates number or  
23 the page?  
24 MR. THOMAS: That's the page  
25 number. The Bates number is AM 4531.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. And let me just ask, who would  
3 have prepared this document?  
4 A. Who physically prepared it?  
5 Q. Yes. Or determined what went into  
6 the document.  
7 MR. TAMBE: Object to the form.  
8 Go ahead.  
9 A. The document as a whole would have  
10 been a joint effort. I had some participation  
11 in a slide or two here as well. So, you know,  
12 depending on who you see as the leader or the  
13 discussion leader on a given subject that's  
14 likely the person who directed the  
15 preparation. The physical preparation was  
16 probably somebody working underneath that  
17 particularly person.  
18 Q. Did Alvarez work with anyone at  
19 Lehman or Lazard or anyone other than Alvarez  
20 to pull this information together?  
21 A. Not to my knowledge.  
22 Q. Do you know who would have  
23 prepared the information that appears on page  
24 28 of the document?  
25 A. I would presume Jim Fogarty was

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. And what is your understanding of  
3 the term stale there?  
4 MR. TAMBE: Object to the form of  
5 the question.  
6 A. I would infer stale to mean that  
7 it was outdated.  
8 Q. Were you part of any oral  
9 presentation to the Creditors Committee in  
10 connection with this written presentation?  
11 A. I was responsible for  
12 communicating a relatively small portion of  
13 this. At that point we were so busy we were  
14 coming in and out of the room as our sections  
15 were approaching. I was not present when this  
16 was discussed.  
17 Q. Um-hum. Was the document sent to  
18 the Creditors Committee and also discussed  
19 with them in a meeting? Or meetings?  
20 A. There was a meeting where this  
21 information was covered, yes.  
22 Q. So was this a Powerpoint that was  
23 handed out at a meeting and there was a  
24 discussion of these -- of the information in  
25 this document?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 the person most responsible for compiling  
3 this.  
4 Q. Now, looking at the first arrow  
5 where it says Assets Purchased, and then the  
6 first bullet it says 43.1 billion repo assets,  
7 book value per Lehman stale marks. Negotiated  
8 a \$5 billion reduction.  
9 Do you see that?  
10 A. Yes.  
11 Q. Do you have an understanding of  
12 what's being referred to there?  
13 A. I think the words speak for  
14 itself. I'm not sure what your question is.  
15 Q. Well, they may speak for  
16 themselves but can you just describe what's  
17 being said there?  
18 A. Book value per Lehman "stale  
19 marks" negotiated a \$5 billion reduction. I  
20 think that says that at that point we had  
21 gained an understanding that there was a  
22 negotiated reduction as compared to the Lehman  
23 marks because the previous marks were deemed  
24 at that point to be stale by whoever was  
25 communicating this information to us.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. Yes. There was a discussion of  
3 this document in a meeting at Weil Gotshal's  
4 offices.  
5 Q. And the representatives of the  
6 Creditors Committee were there?  
7 A. Yes.  
8 Q. Do you recall who in particular?  
9 A. Not specifically. I mean, I know  
10 and have met the two chairs of the Creditors  
11 Committee and they're the only people I could  
12 probably name by name and I'm fairly certain  
13 they were there.  
14 Q. And who are they?  
15 A. July Becker and Noel Purcell.  
16 Q. Other than people from Weil -- who  
17 was there from Weil?  
18 A. I don't recall specifically.  
19 Again, I was only here in this meeting for a  
20 relatively small slice of it. It was a very  
21 large conference room that was quite full. I  
22 know there were Weil people there but I can't  
23 tell you specifically who was there at the  
24 time I was there.  
25 Q. Do you know if any -- anyone from

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 the trustee was there or from Hughes Hubbard?  
3 A. I don't think so.  
4 Q. Do you know if this was sent to --  
5 this document was sent to the trustee at some  
6 point?  
7 A. Not to my knowledge.  
8 Q. Are you aware of any communication  
9 with the trustee between Alvarez and the  
10 trustee concerning the sale transaction?  
11 MR. TAMBE: Object to the form of  
12 the question.  
13 A. I'm aware of communications, yes.  
14 Q. With the trustee concerning the  
15 sales transaction?  
16 A. Yes.  
17 Q. Can you just generally describe  
18 them in terms of time and substance.  
19 A. The one I recall I was in -- I  
20 believe it was almost a year ago today, it was  
21 December 15th, because I've seen the memo on  
22 this in preparation for the deposition.  
23 December 15th, 2008 was the meeting I'm  
24 remembering.  
25 Q. Okay. And what was the meeting

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 they would have been Barclays employees when  
3 we had requested, again as stated before,  
4 the -- you know, the data that supported the  
5 individual securities transferred in the sale.  
6 Q. Is it your understanding the 43  
7 billion repo assets was a valuation of all of  
8 the fed repo collateral?  
9 A. To the best of my recollection, it  
10 was, yes.  
11 Q. Are you aware that there were --  
12 A. Oh, I'm sorry. I should back up.  
13 All the fed repo collateral I think as we're  
14 all probably aware, there was the issue of  
15 certain securities not making its way to  
16 Barclays immediately upon closing of the sale.  
17 And that's roughly a 7 -- it's a \$7 billion  
18 figure that's referred to throughout the  
19 course of the discovery in this matter, but I  
20 should caveat my answer to clarify that I know  
21 now that that was not included. I don't know  
22 that we appreciated that fully at the time.  
23 Q. Okay. We'll refer to that as the  
24 \$7 billion and put aside whether that's the  
25 actual value of the securities or nominal

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 about?  
3 A. Generally about the sale  
4 transaction and -- you know, the context was  
5 helping us to perform some due diligence to  
6 determine how we should react to the  
7 settlement motion that was pending at that  
8 point before the court that I'm sure we're all  
9 well aware of.  
10 Q. Do you recall the upshot of that  
11 discussion?  
12 MR. TAMBE: Objection to the form  
13 of the question.  
14 A. I don't know if I'd characterize  
15 that upshot. I mean, I recall generally what  
16 we were talking about but I don't -- I  
17 wouldn't characterize anything as a particular  
18 upshot.  
19 Q. Turning back to this document and  
20 particularly page 28, the 43.1 billion repo  
21 assets, do you understand where that number  
22 comes from and what it represents?  
23 A. I believe it comes from a data --  
24 a collection of data we had received from  
25 former Lehman people, current -- at this point

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 value or anything like that. Just so we can  
3 understand each other.  
4 A. Sure.  
5 Q. So if you add -- would you then  
6 add \$7 billion to the 43.1 in order to get the  
7 stale marks that's referred to there?  
8 MR. TAMBE: Objection to the form  
9 of the question.  
10 A. If you're asking me today would I  
11 add the 7 billion to determine the full  
12 ascribed value of what was transferred today  
13 I'd say yes. I'm not sure we had that  
14 understanding at this time.  
15 Q. Okay. Well, can you think of any  
16 other way that 43.1 would have been derived  
17 other than taking some stale marks and  
18 subtracting out the 7 billion?  
19 MR. TAMBE: Objection to the form  
20 of the question.  
21 A. As I think I stated earlier, I  
22 believe the 43.1 billion was derived through  
23 an individual listing of CUSIP by CUSIP of the  
24 assets that were determined to have been  
25 transferred at that point.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Do you know when those marks were  
3 marked? They're being referred as to stale.  
4 I just don't know -- do you have knowledge of  
5 whether those marks were updated as of since  
6 September 12th, 2008?

7 MR. TAMBE: Objection to the form.

8 A. Since the data was delivered to us  
9 through what people are currently Barclays  
10 employees, I think they would have the best  
11 understanding of what specifically those  
12 numbers were and what they were based on.

13 Q. I understand that. But I'm just  
14 asking what you know. We can ask them  
15 separately. It says stale marks. I'm just  
16 treating to think are the stale marks the ones  
17 that are, you know, five days old, three days,  
18 old, go back to September 12th? I mean, do  
19 you know?

20 A. I generally -- my current  
21 understanding is that the values ascribed at  
22 this time, that was the value that the entity  
23 as a whole was ascribing to these securities  
24 at the time the deal was closed. I don't know  
25 that I accept the characterization of them

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 and keep the marks current. And there was  
3 also the ongoing contemporaneous marking  
4 process that was done by their clearing bank.

5 Q. And that's based on Ian Lowitt's  
6 deposition testimony?

7 MR. TAMBE: Objection to form.

8 A. I don't think it's based solely on  
9 that. It's based on an aggregation of my  
10 understanding.

11 Q. Is it just the aggregation we  
12 talked about earlier in the deposition?

13 A. It's based on a -- you know, a  
14 series of -- the information I've gathered and  
15 absorbed in the course of being involved in  
16 this matter.

17 Q. Is there anything else specific --  
18 I mean, can you -- you read the deposition  
19 testimony. You've read, you know, the motion  
20 paper -- the litigation papers.

21 Have you talked to someone who  
22 said they were updating their marks that week  
23 at Lehman?

24 A. Again, I'm aware that the clearing  
25 banks, JPM was doing contemporaneous marks.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 being stale marks based on what I know now.  
3 At the time we obviously had a belief or an  
4 understanding that they were thought to be  
5 stale marks.

6 Q. And have you learned since then  
7 that -- I mean, do you know whether those  
8 people -- whether those marks were updated  
9 through the week of September 15th?

10 MR. TAMBE: Objection to the form  
11 question.

12 Q. And the way you phrased it was it  
13 was continued to be the value, understanding  
14 that the values ascribed at this time. It's a  
15 little more specific. Do you know -- I think  
16 you've said you don't know earlier but do you  
17 know whether these marks were updated through  
18 the week -- by someone at Lehman through the  
19 week of September 15th?

20 MR. TAMBE: Objection. Asked and  
21 answered.

22 A. Yeah, I think I'd refer back to  
23 what I believe I testified to a few moments  
24 which is I had a general understanding that  
25 they were attempting to do business as usual

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 That's their responsibility as the clearing  
3 agent. Bank of New York who was -- these  
4 securities were being transferred to was doing  
5 their own independent valuation or ascribing  
6 their own independent values to it. There  
7 were -- you know, there wasn't just one source  
8 of value during this week.

9 Q. I'm asking about Lehman. Other  
10 than Lowitt's, Mr. Lowitt's testimony, do you  
11 have any knowledge that Lehman was updating  
12 these marks during the week?

13 MR. TAMBE: Objection, asked and  
14 answered.

15 A. I believe it was asked and  
16 answered. And I believe they were attempting  
17 to continue to mark the books on a daily  
18 basis.

19 Q. And that belief is based on what  
20 other than Mr. Lowitt's testimony? And they  
21 being Lehman. So not BNY or JPM or the  
22 clearing or anything else.

23 A. I can't tell you specifically the  
24 single item or the series of items that lead  
25 me to believe that that was the case. It's

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 quite possible if I go back and review</p> <p>3 material I'll be convinced otherwise. But</p> <p>4 sitting here today it's my general</p> <p>5 understanding that the marks were being</p> <p>6 updated by Lehman continuing on a daily basis.</p> <p>7 Q. Did you see Mr. McDade's testimony</p> <p>8 that he didn't believe that they were being</p> <p>9 updated?</p> <p>10 A. I do recall seeing that testimony,</p> <p>11 yes.</p> <p>12 Q. Okay. So we have Mr. McDade</p> <p>13 testifying that he believed they weren't being</p> <p>14 updated. We have Mr. Lowitt's testimony. Is</p> <p>15 there anything else specific that anyone at</p> <p>16 Lehman has told you or that you'd gone and</p> <p>17 looked at the documents to confirm that marks</p> <p>18 were being updated?</p> <p>19 MR. TAMBE: Objection. Asked and</p> <p>20 answered.</p> <p>21 A. Again, general recollection, we</p> <p>22 may have gotten data even out of the Lehman</p> <p>23 GFS system since we began our work. But I</p> <p>24 have a general understanding that the marks</p> <p>25 were being updated daily.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 As to the -- you know, the</p> <p>3 distinction between Mr. McDade's testimony and</p> <p>4 Mr. Lowitt's, I'm aware of the contradiction</p> <p>5 there. If I were to choose between the CFO</p> <p>6 who is closer to the marking process on a</p> <p>7 daily basis than a chief operating officer</p> <p>8 which I believe was Mr. McDade's title I'd</p> <p>9 probably take the CFO in that context.</p> <p>10 Q. I really want to move on. I just</p> <p>11 want to be very specific. I just need to know</p> <p>12 if there's some other specific basis you have</p> <p>13 for believing there were marks being updated</p> <p>14 by Lehman that week other than Mr. Lowitt's</p> <p>15 testimony. Because if there's some other</p> <p>16 basis I've just got to know. I'll keep asking</p> <p>17 it until you answer it.</p> <p>18 A. I will refer to my prior</p> <p>19 testimony.</p> <p>20 MR. TAMBE: Objection. You've</p> <p>21 asked him this any number of times:</p> <p>22 He's answered any number of times.</p> <p>23 MR. THOMAS: The answer is</p> <p>24 non-responsive. The answer is I have a</p> <p>25 general belief and so forth so --</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: He's given you his</p> <p>3 answer. And he's mentioned the GFS data</p> <p>4 now. So what else do you want him to</p> <p>5 talk about? He's told you the bases for</p> <p>6 his understanding.</p> <p>7 MR. THOMAS: I want to make sure</p> <p>8 we close that out.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q. So at this time, the time of this</p> <p>11 document, at the time you were making your</p> <p>12 presentation to the Creditors Committee, is it</p> <p>13 fair to say that Alvarez believed the Lehman</p> <p>14 marks were stale?</p> <p>15 MR. TAMBE: Objection to the form</p> <p>16 of the question.</p> <p>17 A. No. I don't think that's a fair</p> <p>18 characterization. I think this was the</p> <p>19 recitation of something that was communicated</p> <p>20 to us. I don't think we were making a</p> <p>21 qualitative assessment that it was accurate or</p> <p>22 inaccurate. We were simply communicating</p> <p>23 information to a key constituent of ours.</p> <p>24 Q. Do you know who communicated that</p> <p>25 to Alvarez?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know specifically because</p> <p>3 I didn't get a chance to get a hold of Jim</p> <p>4 Fogarty in the last couple of days. He would</p> <p>5 be the better person to ask. But I infer from</p> <p>6 the documents I've seen Ian Lowitt or somebody</p> <p>7 that worked with Ian Lowitt.</p> <p>8 Q. Okay. You're aware that --</p> <p>9 A. I'm sorry. Did I say Ian Lowitt?</p> <p>10 Q. Yes.</p> <p>11 A. I believe it was Paolo Tonucci.</p> <p>12 Q. You're aware that Barclays did not</p> <p>13 believe that the marks of the repo collateral</p> <p>14 were still accurate as of the time of closing,</p> <p>15 correct?</p> <p>16 A. I'm sorry. Am I aware sitting</p> <p>17 here today that Barclays doesn't believe those</p> <p>18 marks were accurate?</p> <p>19 Q. Right.</p> <p>20 A. I understand that is an assertion,</p> <p>21 yes.</p> <p>22 Q. Okay. In any event, Alvarez</p> <p>23 understood and communicated to the Committee</p> <p>24 that there was a difference in the value of</p> <p>25 the repo assets ascribed for purposes of the</p>



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2 sales transaction and -- between that and  
3 the -- what's referred to here as the stale  
4 marks. The nominal marks on the fed repo  
5 collateral.

6 MR. TAMBE: Objection to the form  
7 of the question.

8 A. Sorry. I lost the train of that  
9 question. Could you repeat it?

10 Q. Okay. Alvarez understood and  
11 conveyed to the Committee at this time that  
12 there was a difference between the Lehman  
13 marks and the -- of the repo collateral and  
14 the value of the repo collateral ascribed to  
15 the repo collateral for purposes of the sale  
16 transaction by the parties.

17 MR. TAMBE: Object to the form of  
18 that question.

19 A. I think we've gone over this. You  
20 know, I think the words communicate that  
21 concept. I'm not necessarily agreeing that we  
22 accepted it at the time as being -- you know,  
23 I take this as Jim was relaying information  
24 that we had come to understand through others  
25 at that point. I don't think we were making a

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2 make its presentation to the Creditors  
3 Committee as accurate as it could, correct?

4 A. Yeah. We were certainly trying to  
5 convey accurate information to the committee.

6 Q. And Alvarez also understood that  
7 the -- if you look at the next bullet point --  
8 that the sale transaction conveyed to Barclays  
9 the unencumbered box?

10 A. Yes.

11 Q. And is the unencumbered box  
12 referring to the clearance box assets?

13 MR. TAMBE: Object to the form.  
14 Go ahead.

15 A. Is unencumbered box relating to  
16 the -- unencumbered box I think refers to  
17 unencumbered collateral that was transferred  
18 that wasn't -- that didn't have a lien on it  
19 prior to the transaction.

20 Q. Would you take a look back at the  
21 clarification letter, please.

22 A. (Witness complies.)

23 Q. And if you would look at  
24 Section -- paragraph 1(a)(ii)(B).

25 A. Yes.

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2 qualitative judgment at that point that it's  
3 right, wrong, or otherwise.

4 Q. Well, putting aside whether it's  
5 correct or not, that's what was being  
6 conveyed, though; that there was this  
7 difference between the old Lehman marks and  
8 the parties' valuation of the repo collateral  
9 for purposes of the sale transaction. That's  
10 what the reduction is referring to, correct?

11 MR. TAMBE: Object to the form of  
12 the question.

13 A. If I understand that correctly  
14 that's probably a fair characterization.

15 Q. Okay. Let me ask it open ended.  
16 What is the reduction that's -- the \$5 billion  
17 reduction referring to there?

18 A. What is it referring to?

19 Q. Yes.

20 A. Well, it's referring to apparently  
21 a negotiated difference between the value  
22 which the assets were acquired versus the way  
23 they were characterized prior to the  
24 transaction.

25 Q. And Alvarez would have tried to

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2 Q. Do you understand that to be  
3 referring to what's being referred to in the  
4 Alvarez presentation as the unencumbered box?

5 A. Yes. Sitting here today I would  
6 make that connection.

7 Q. Okay. So, I mean, as of the time  
8 of the presentation Alvarez's understanding  
9 was that the sale transaction, specifically  
10 the clarification letter, did convey the  
11 unencumbered box to Barclays and that that was  
12 worth approximately \$1.9 billion?

13 MR. TAMBE: Objection to the form  
14 of the question.

15 A. Our understanding at the time was  
16 being conveyed here, yes, that that was  
17 transferred.

18 Q. Okay. Did that understanding ever  
19 change in terms of the conveyance of  
20 1.9 billion unencumbered box?

21 A. I'm generally aware that there are  
22 disputes perhaps between the SIPA trustee and  
23 Barclays on this opinion. I may have this  
24 mixed up with other categories of securities  
25 or assets that were transferred but accepting

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 that there may be disputes on that as we sit  
3 here today I would answer that, you know, that  
4 at the time we were communicating that this  
5 was an un -- collateral that was sitting in an  
6 unencumbered box at the time it was  
7 transferred.

8 Q. So Alvarez's understanding didn't  
9 change with respect to that. I understand  
10 there may be -- with another party there may  
11 be some dispute or whatever, but in terms of  
12 Alvarez's understanding of that did that  
13 change at any point in time that this was  
14 being conveyed?

15 A. If I'm not mistaken I thought this  
16 was depicting what was physically transferred  
17 at that point. So I'm not sure that has  
18 changed assuming that is the case. If it was  
19 physically transferred, it was transferred.  
20 If there are items in dispute currently I'm  
21 not certain of the details of that as I sit  
22 here.

23 Q. Was it Alvarez's understanding  
24 based upon the term of the clarification  
25 letter we just read that these -- this

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 1.9 billion was, in fact, being conveyed as  
3 part of the sale transaction?

4 MR. ROTHMAN: Objection to form.

5 A. Well, again, I draw the connection  
6 between the words here in this section you  
7 drew me to and the unencumbered box. I assume  
8 that is correlated here.

9 Q. The fourth bullet point refers to  
10 .8 billion 15(c)(3)-3 securities.

11 Do you see that?

12 A. Yes.

13 Q. And Alvarez understood that that  
14 also was being conveyed as part of the sale  
15 transaction.

16 A. Yes. That's what we were  
17 communicating here in terms of our  
18 understanding at that point.

19 Q. Yeah. And the topic of this is  
20 not what's being conveyed. It's asset  
21 purchased, correct?

22 A. Yeah. That's how it's depicted,  
23 yes.

24 Q. So your understanding is you're  
25 just briefing the Creditors Committee on the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 assets that were purchased as part of the  
3 sales transaction; is that correct?

4 A. That's probably a fair  
5 characterization.

6 Q. And then under Liabilities  
7 Assumed -- by the way, did anyone -- do you  
8 recall anyone at the Creditors Committee  
9 raising any questions concerning any of these  
10 items in terms of the assets purchased listed  
11 here?

12 A. Well, again, I wasn't in the room  
13 at the time this was communicated. So I can't  
14 answer that.

15 Q. Whether you were there personally,  
16 are you aware of any Creditors Committee at  
17 any point raising questions about whether  
18 these assets were purchased or --

19 MR. TAMBE: Objection to the form  
20 of the question.

21 A. Sitting here today, I'm not aware,  
22 no.

23 Q. Okay.

24 A. I'm not aware one way or the  
25 other, just to clarify.

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2 Q. Are you aware of any  
3 communications between Alvarez and the trustee  
4 concerning the three bullet points we  
5 looked -- we just discussed?

6 A. Between Alvarez and the SIPA  
7 Trustee.

8 Q. Yeah. Alvarez and the SIPA  
9 Trustee or the trustee's representatives and  
10 the fact that -- and the first, second, and  
11 third -- first, second and fourth bullet  
12 points under the assets purchased?

13 A. I'm sorry. Am I aware of any  
14 communications between Alvarez & Marsal and  
15 the SIPA Trustee on these three bullet points?

16 Q. Yes. And by bullet points I mean  
17 the topics in the bullet points.

18 Let me just rephrase it.

19 Are you aware of any conversations  
20 between Alvarez and the SIPA Trustee or the  
21 trustee's representatives and the \$1.9 billion  
22 unencumbered box?

23 MR. TAMBE: Object to the form of  
24 the question.

25 A. No. And I can probably

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 short-circuit this. I'm not familiar as I sit</p> <p>3 here of any communications between Alvarez and</p> <p>4 the SIPA Trustee on these issues.</p> <p>5 Q. Okay. Under Liabilities Assumed,</p> <p>6 do you see the first 38.0 billion extinguished</p> <p>7 liability to the fed?</p> <p>8 A. Yes.</p> <p>9 Q. Is it your understanding that</p> <p>10 that's -- well, what is your understanding of</p> <p>11 the 38 billion?</p> <p>12 A. The 38 billion would be the</p> <p>13 information we had at that point as to the</p> <p>14 liabilities associated with these particular</p> <p>15 assets. You know, we all know today that</p> <p>16 there's a \$7 billion issue if I could</p> <p>17 characterize it that way that would make up</p> <p>18 the difference between a 38 and a 45.</p> <p>19 Q. Right.</p> <p>20 A. But this is what we understood at</p> <p>21 that point.</p> <p>22 Q. Right. So what it's saying is the</p> <p>23 understanding here if you add 7 to the 38 you</p> <p>24 get 45 in terms of that being the value of the</p> <p>25 fed repo collateral, correct?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection to the form</p> <p>3 of the question.</p> <p>4 A. No. We're talking here about</p> <p>5 liabilities. Not value of the collateral.</p> <p>6 Q. Right.</p> <p>7 A. This refers to the amount of the</p> <p>8 liability to the fed.</p> <p>9 Q. Well, is it your understanding</p> <p>10 that Barclays -- okay. Is your understanding</p> <p>11 that Barclays just transferred 38 billion or</p> <p>12 45 billion as part of the -- in connection</p> <p>13 with the fed repo?</p> <p>14 A. My understanding today?</p> <p>15 Q. Yes.</p> <p>16 A. I understand that they transferred</p> <p>17 45 billion.</p> <p>18 Q. What was your understanding at the</p> <p>19 time of this document?</p> <p>20 A. I'm not sure I had any</p> <p>21 understanding at the time of this document. I</p> <p>22 wasn't focused on this at all.</p> <p>23 Q. Let me do one more document and</p> <p>24 then maybe break for lunch if that makes</p> <p>25 sense.</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Let me show you a document that</p> <p>3 we'll marked as 462A.</p> <p>4 (Deposition Exhibit 462A, e-mail</p> <p>5 dated Monday, 06 October 2008, marked</p> <p>6 for identification as of this date.)</p> <p>7 BY MR. THOMAS:</p> <p>8 Q. Let me just start by asking is</p> <p>9 this a document that you recognize?</p> <p>10 A. Yes. I recognize this.</p> <p>11 Q. And when did you first see this</p> <p>12 document?</p> <p>13 A. As I recall, I saw it in</p> <p>14 connection with my preparation for the</p> <p>15 deposition. If I saw it before that I don't</p> <p>16 recall seeing it. But it's possible.</p> <p>17 Q. Okay. Who is Conor Tully?</p> <p>18 A. Conor Tully is with FTI.</p> <p>19 Q. And what's FTI?</p> <p>20 A. FTI is a financial advisory firm</p> <p>21 serving as financial advisors to the Unsecured</p> <p>22 Creditors Committee.</p> <p>23 Q. In connection with the sale</p> <p>24 transaction?</p> <p>25 A. In connection with the</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 administration of their duties as the UCC. I</p> <p>3 don't know what if any role they had in</p> <p>4 connection with the sale transaction.</p> <p>5 Q. Okay.</p> <p>6 MR. TAMBE: Could I just ask a</p> <p>7 question about this document? I notice</p> <p>8 it doesn't have any Bates numbers on it.</p> <p>9 Is this a document that you have</p> <p>10 produced, we've produced, someone else</p> <p>11 has produced in this case?</p> <p>12 MR. THOMAS: That's a question I</p> <p>13 can't answer right now.</p> <p>14 MR. TAMBE: The only reason I ask</p> <p>15 is, I mean, all of LBHI's documents are</p> <p>16 already in the possession of Barclays.</p> <p>17 So if there's documents that are going</p> <p>18 to be produced and used at depositions I</p> <p>19 would have hoped that Barclays would</p> <p>20 have produced them during the course of</p> <p>21 this proceeding. You have all our</p> <p>22 documents.</p> <p>23 MR. THOMAS: Okay. Yeah, I can't</p> <p>24 give you the answer but I'll look into</p> <p>25 it.</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 MR. TAMBE: If you could find out  
3 at the break that would be helpful.  
4 MR. THOMAS: Sure.  
5 MR. TAMBE: Sorry. Go ahead.  
6 BY MR. THOMAS:  
7 Q. Who is William Fox?  
8 A. William Fox is a managing director  
9 at Alvarez & Marsal.  
10 Q. And who is Samuel Star?  
11 A. Samuel Star is with FTL.  
12 Q. Ken Green?  
13 A. Ben Kream?  
14 Q. Oh, Ben, yes. Excuse me.  
15 A. I don't know who that is.  
16 Q. How about D. Fleming?  
17 A. That appears to be Dan Fleming.  
18 Q. Is he someone who stills works at  
19 Lehman?  
20 A. Yes. He's with Lehman as far as I  
21 know.  
22 Q. C. L. Jones?  
23 A. I don't know C. L. Jones. Lehman  
24 suffix on the e-mail, of course, so...  
25 Q. And Tamir Shafer?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Do you see that?  
3 A. Yes.  
4 Q. Does this appear to be conveying  
5 the same points, information, that -- in the  
6 document we just looked at, the information to  
7 the Creditors Committee?  
8 MR. TAMBE: Objection to the form  
9 of the question.  
10 A. Yes. It's this and perhaps other  
11 communications like this that I was thinking  
12 about when I was communicating the state of  
13 our knowledge at that point and what the  
14 source of it was.  
15 Q. And do you know -- does this  
16 refresh your recollection at all about who put  
17 together this information?  
18 MR. TAMBE: Objection to the form.  
19 A. To the best of my knowledge, this  
20 was compiled by Alvarez & Marsal based on  
21 information we were gathering from former  
22 Lehman people.  
23 Q. Were you also reviewing records  
24 and documents of Lehman's as part of that  
25 process?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. Yes. Tamir is with Lehman. I  
3 think I met him or at least heard of him. I  
4 think he's in their treasury group or was in  
5 their treasury group.  
6 Q. Do you know if he's still there?  
7 A. I don't know specifically.  
8 Q. Can you describe generally what  
9 this document is?  
10 A. It's an e-mail.  
11 Q. Okay. If you would look at three  
12 pages into the document. And some type of  
13 schedule or sheet. Where it says Lehman  
14 Holding Barclays Transaction at the top, do  
15 you see that?  
16 A. Yes.  
17 Q. Do you see where it says Repo  
18 Assets 38.07?  
19 A. Yes.  
20 Q. And it says Negotiated Mark  
21 Haircut.  
22 Do you see that?  
23 A. Yes.  
24 Q. And the Assets Transferred Under  
25 Repo (sale marks).

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. We were getting e-mails -- I've  
3 seen e-mails where former Lehman people were  
4 sending us the data behind, for example, these  
5 repo assets. And I can't speak specifically  
6 for each and every item here but I think it  
7 was information we were getting from former  
8 Lehman people.  
9 Q. On the right side there under  
10 Liabilities where it says Net Book Loss,  
11 what's your understanding of what that line  
12 represents?  
13 A. I would infer that to be sort of a  
14 plug figure to communicate what the difference  
15 between the two columns independent of that  
16 item is. And it's communicated as a net book  
17 loss. Presumably from the perspective of the  
18 Lehman estate, if you accept the stale marks  
19 at their gross figure, Lehman lost  
20 \$3.27 billion on the deal.  
21 Q. And do you have an understanding  
22 of the assumed cure figure of 2.25, what that  
23 derives from?  
24 MR. TAMBE: Objection to the form.  
25 A. I would expect that number came

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 from Barclays personnel. I don't think we had 3 an independent basis for knowing what that 4 number was. 5 Q. When you say Barclays -- I'm 6 sorry. When you say Barclays personnel do you 7 mean Lehman's -- former Lehman personnel -- 8 A. Former Lehman personnel. 9 The communications I've seen 10 around this kind of information indicated that 11 we were attempting to meet with people like 12 Paolo Tonucci, Dan Fleming at the time. So 13 I'm presuming that somebody like that would 14 have provided this information. 15 Q. Would you have -- at this point in 16 time would Alvarez had had a copy of the 17 purchase agreement? 18 A. I don't know. We weren't 19 attempting at this time to do a comprehensive 20 evaluation of the deal. We were just 21 attempting really to lock down the information 22 as to what got transferred in the deal. This 23 wasn't done for the purpose of a full-blown 24 holistic analysis of the deal and the 25 economics of it. We were focused on many</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 other things at that point in time and this 3 was not in any way a priority. 4 Q. Are you aware that the -- that 5 Barclays was not obligated to actually assume 6 any particular contracts under the sale 7 transaction? 8 MR. TAMBE: Objection to the form 9 of the question. 10 A. Well, sitting here today, I'm 11 aware of -- they had options as to which 12 contracts they would assume and not assume. 13 THE VIDEOGRAPHER: The time is 14 12:27. We're going off the record. 15 (Videotape changed.) 16 THE VIDEOGRAPHER: The time is 17 12:27. We are back on the record. 18 BY MR. THOMAS: 19 Q. What's your understanding of what 20 this page represents? 21 A. I believe it's a summary of data 22 that we were -- had obtained around this time 23 from former Lehman people. And it's depicting 24 the various categories of securities and the 25 amount at which they were deemed to be</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 transferred at -- or the value at which -- in 3 the data set that was relayed to us. 4 Q. And do you know whether these -- 5 specifically where these values came from? 6 Was it -- 7 A. Specifically, no. 8 Q. The last -- near the bottom there 9 it says, "Less Friday 9/19 transfers." 10 And then it has a negative entry 11 of a little over a billion dollars. Do you 12 know what that's referring to? 13 A. Not specifically. I could make an 14 inference but -- 15 Q. What's your inference? 16 A. That the amount of the securities 17 that was not -- not transferred by virtue of 18 activity that occurred on Friday, the 19th. 19 They weren't available for transfer for 20 whatever reason and that's how I would infer 21 that item. 22 Q. Okay. 23 MR. THOMAS: Why don't we go ahead 24 and take our lunch break if that works 25 for everyone.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 MR. TAMBE: 45 minutes, an hour? 3 MR. THOMAS: Why don't we do 45 4 minutes. 5 THE VIDEOGRAPHER: The time is 6 12:29. We're going off the record. 7 (Luncheon recess taken at 12:39 8 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 AFTERNOON SESSION 3 (Time noted: 1:27 p.m.) 4 THE VIDEOGRAPHER: The time is 5 1:27. We are back on the record. 6 * * * 7 PHILIP KRUSE, resumed and 8 testified as follows: 9 EXAMINATION BY (Cont'd.) 10 MR. THOMAS: 11 Q. Mr. Kruse, let me ask you to 12 please go back to Exhibit 461A which is the 13 presentation to the Creditors Committee. 14 A. (Witness complies.) 15 Q. And, again, at page 28 I believe 16 you indicated that as part of your preparation 17 for your testimony today, you went back and 18 reviewed the Rule 60 motions. Would that 19 include LBHI's Rule 60 motion? 20 A. Yes. 21 Q. And you recall there being a 22 discount talked about in that motion. 23 A. Yes. 24 Q. Is that the same discount that's 25 referred to on page 28, the \$5 billion</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 reduction? 3 MR. TAMBE: Object to the form of 4 the question. 5 A. I believe it applies to the same 6 pool of securities. 7 Q. Is it different in any way? 8 MR. TAMBE: Objection to the form 9 of the question. 10 A. Well, no. Again, because it 11 applies to the same group of securities, the 12 repo collateral, I think it is the same 13 concept being communicated. 14 Q. Okay. And that concept is that 15 there was agreement to value the securities at 16 approximately \$5 billion less than the Lehman 17 marks? 18 A. Well -- 19 MR. TAMBE: Objection -- okay. 20 Objection to the form of the question. 21 A. We've spoken about what this 22 communicates and how I infer what this was 23 communicating. This talks about stale marks 24 and negotiated a \$5 billion reduction from the 25 marks that were on Lehman's books. The</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 discount, it's characterized probably 3 differently in the Rule 60 motion and in the 4 other material we gathered in the course of 5 discovery. But I think it's the same concept 6 at play if that's your question. 7 Q. Right. It's the same difference 8 in values at play. 9 A. The same \$5 billion, yes. 10 Q. LBHI understood as of the time of 11 closing that the purchase agreement was 12 transferring the exchange-traded derivatives 13 to Barclays, correct? 14 A. You're asking LBHI's 15 understanding. 16 Q. Yeah. 17 A. I would presume LBHI understood 18 that. At the time of the closing, yes. 19 Q. Right. And that's your 20 understanding of what the purchase agreement 21 says, correct? 22 A. The clarification letter, I 23 believe, is where that comes up. If I'm not 24 mistaken. 25 Q. You understand the purchase</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 agreement to include the clarification letter? 3 MR. TAMBE: Objection to the form 4 of the question. 5 A. Yeah. I'll accept that as a way 6 to talk about it. 7 Q. Did Alvarez ever seek to value the 8 exchange-traded derivatives that were 9 transferred to Barclays as part of the deal? 10 A. Any work, again, we've done on 11 the -- in the area of valuation of the assets 12 transferred is subject to work we've been done 13 under direction of counsel. 14 Q. Okay. Other than work you're 15 describing as work being done under direction 16 of counsel for purposes of litigation, did 17 Alvarez ever seek to put a value on the 18 exchange-traded collateral -- exchange-traded 19 derivatives? 20 MR. TAMBE: Objection to the form 21 of the question. 22 A. No. Alvarez, to my knowledge, 23 other than in connection with the work with 24 Jones Day has not. 25 Q. Are you aware of whether LBHI has</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 done so?  
3 A. LBHI since the closing, I would  
4 say no. Because, you know, we are essentially  
5 LBHI in a way of thinking.  
6 Q. And other than the work being done  
7 with Jones Day, are you aware of anyone else  
8 attempting to put a value on the derivatives?  
9 A. Not to my knowledge.  
10 Q. Let me show you a document we'll  
11 go ahead and mark as 463A.  
12 (Deposition Exhibit 463A, document  
13 bearing production numbers WGM-LEHMAN-E  
14 00005853 through WGM-LEHMAN-E 00005866,  
15 marked for identification as of this  
16 date.)  
17 BY MR. THOMAS:  
18 Q. Is this a document you've seen  
19 before?  
20 A. Yes. I believe I have.  
21 Q. And when is the first time you saw  
22 it?  
23 A. The first time that I recall is in  
24 connection with my preparation for this  
25 deposition.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 MR. TAMBE: Objection to form.  
3 A. My presumption would be Jack and  
4 Daniel were heading up specific asset teams  
5 and were trying to get their bearings on what  
6 the estate owned and didn't own and this  
7 presumably would have been sent in the context  
8 of them getting their bearings on that  
9 subject.  
10 Q. And as part of that analysis and  
11 work I think you mentioned Alvarez may have  
12 spoken with former Lehman people who had gone  
13 over in the transaction to Barclays. But I  
14 assume that's not all that Alvarez did. They  
15 also spoke with Weil, for example, and tried  
16 to gather information to make a complete  
17 analysis as possible. Is that fair enough?  
18 A. I'm sure that was happening, yes.  
19 Q. If you would turn the page,  
20 please.  
21 A. (Witness complies.)  
22 Q. Under Purchased Assets, and the  
23 first bullet point under Securities and  
24 Trading Operations. And let me just back up  
25 under Purchased Assets. It says At closing

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Very recently.  
3 A. Yes.  
4 Q. Do you know one way or another if  
5 you saw it earlier?  
6 A. To my knowledge, I did not.  
7 Q. You recognize that as an e-mail  
8 from Glenn West at Weil Gotshal dated  
9 September 27th, 2008?  
10 A. Yes.  
11 Q. And it goes to, among others, Jay  
12 McCarthy. Who is that?  
13 A. That would probably -- that would  
14 be Jack McCarthy.  
15 Q. And he works at Alvarez?  
16 A. Yes.  
17 Q. And D. Ehrmann also with Alvarez?  
18 A. Yes.  
19 Q. And the subject description is,  
20 "Here is all we have at the moment that makes  
21 an effort to describe what Barclays got and  
22 didn't get."  
23 Why was Weil sending you this  
24 information -- sending Alvarez this  
25 information at this time?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Barclay acquired all purchased assets. And  
3 then down below it says The securities set  
4 forth on Schedule A to the clarification  
5 letter, i.e., the securities subject to the  
6 Barclays repurchase agreement.  
7 Do you understand that as just  
8 listing all the -- or referring to the fed  
9 repo collateral?  
10 A. Yes.  
11 Q. And was that consistent with  
12 Alvarez's understanding at the time that as  
13 part of the deal Barclays was to receive all  
14 the fed repo collateral?  
15 A. I think Alvarez would have been  
16 gaining that understanding concurrent with an  
17 e-mail like this. I think we were focused on  
18 it prior to closing.  
19 Q. Okay. Did Alvarez ever form any  
20 inconsistent -- strike that.  
21 Looking at the next bullet point  
22 where it says, "The securities and other  
23 assets held in LBI's clearance boxes as of the  
24 time of the closing."  
25 Do you see that?

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2 A. Yes.

3 Q. And do you understand Schedule B  
4 to the clarification letter basically listing  
5 the clearance box assets that were being  
6 transferred to Barclays as part of the  
7 purchase agreement?

8 A. That's my understanding, yes.

9 Q. Okay. And turning the page, the  
10 next bullet point where it says, "All exchange  
11 traded derivatives and any property that might  
12 be held to security obligations under such  
13 derivative," do you see that point?

14 A. Yes.

15 Q. And is that consistent with what I  
16 believe was your earlier testimony that you  
17 understood that the purchase agreement  
18 transferred to Barclays all exchange-traded  
19 derivatives?

20 MR. TAMBE: Objection to the form  
21 of the question.

22 A. Yeah. I think that was part of my  
23 earlier testimony.

24 Q. And that was -- that was Alvarez's  
25 understanding of the deal at this time?

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2 any customer including any held by or on  
3 behalf of LBI to secure the obligations of any  
4 customer whose accounts are being transferred  
5 to purchaser as part of the business and to  
6 the extent permitted by applicable law and as  
7 soon as practicable after the closing, 769  
8 million of securities as held by or on behalf  
9 of LBI on the date hereof pursuant to rule  
10 15(c)(3)-3 of the Securities and Exchange Act  
11 of 1934 as amended or securities of  
12 substantially the same nature and value."

13 Was Alvarez's understanding that  
14 as part of the purchase agreement Barclays was  
15 to receive \$769 million of the 15(c)(3)  
16 securities or if that wasn't allowed by law,  
17 other securities of the same nature and value?

18 A. Well, the document as provided to  
19 us by Weil Gotshal I think speaks for itself  
20 on that point. I just want to clarify I'm  
21 aware now that this is a subject of dispute  
22 between LBI and Barclays and I'm not in a  
23 position to opine or offer any insight on  
24 that.

25 Q. Right. I guess the question,

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2 A. At this time, yes. Our  
3 understanding would have been gained through  
4 things like this.

5 Q. Okay. At any point did your  
6 understanding of the deal with respect to  
7 those three items change? Your being  
8 Alvarez's?

9 A. With respect to those three items  
10 I have no knowledge that our understanding  
11 changed.

12 Q. If you would turn a couple more  
13 pages to Bates stamp 5857 or page 4 of the  
14 document.

15 A. (Witness complies.)

16 Q. And if you want to flip back to  
17 the prior page you're welcome to. It's --  
18 that bullet point at the top of page 4 is  
19 under something entitled Customer Accounts.

20 A. Um-hum.

21 Q. Okay. And we're still under the  
22 big heading of Purchased Assets.

23 And this bullet point at the top  
24 of 4 says, "Purchaser shall receive for the  
25 account of customer any and all property of

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2 though, is was that Alvarez's understanding at  
3 the time that Barclays was entitled to either  
4 the 769 million of the 15(c)(3) securities if  
5 permitted by law or if not permitted by law  
6 securities of substantially the same nature  
7 and value?

8 A. I'm not even sure I would go that  
9 far. In the context of what we were trying to  
10 accomplish at this time, you know, the  
11 intricacies of customer property and things  
12 that were probably under the purview at that  
13 time of LBI wouldn't have been a particular  
14 focus of ours. Obviously, it's here in the  
15 document that was provided to us. The degree  
16 to which Alvarez & Marsal focused on this or  
17 really thought about it or considered it, I  
18 wouldn't presume anything beyond that it's  
19 here on the document.

20 Q. Is it your understanding at least  
21 that that's what Weil was telling you was part  
22 of the deal?

23 A. Well, I think the document speaks  
24 for itself in terms of where it came from and  
25 what it says.



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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. So as part of its -- about how  
3 many people at Alvarez were working on this  
4 effort to try to assess the transfers, the  
5 deal, during this period of time?  
6 MR. TAMBE: Objection to the form  
7 of the question.  
8 A. Difficult for me to characterize  
9 numbers of people. It was a substantial part  
10 of our effort at that point. I think as it  
11 relates to Barclays in particular, our focus  
12 was on, you know, bearing in mind, of course,  
13 that the business and all of its systems, its  
14 records, all of its systems, and substantially  
15 all of its employees were being moved over to  
16 Barclays. The TSA, the Transition Services  
17 Agreement, was the primary focus of ours as it  
18 related to Barclays at the time. And so the  
19 numbers of people -- there's within this  
20 October 8th dec I think there's some depiction  
21 of the numbers of people that we were gearing  
22 up with at that time. But a substantial  
23 portion of those people were involved in this  
24 effort across multiple asset classes and  
25 multiple teams that I think is probably best

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2 way, that was our focus.  
3 Q. Did anyone at the Committee  
4 express any surprise that there was a  
5 difference between the agreed value of the  
6 marks as part of the transaction and some  
7 prior Lehman marks?  
8 MR. TAMBE: Objection to form.  
9 A. At this meeting? I think I  
10 covered that.  
11 Q. At the meeting -- okay. Let's try  
12 it without the meeting.  
13 A. I was not at the meeting so I  
14 can't offer any insight.  
15 Q. You tricked me.  
16 Okay. At any time to your  
17 knowledge.  
18 A. Just to clarify, I was not at any  
19 part of the meeting so I can't offer any  
20 insight.  
21 Q. At any time, to your knowledge.  
22 A. At any time did -- I'm sorry. I  
23 just want to make sure I got your question  
24 straight. I've lost track.  
25 Q. At any time did anyone, to your

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 portrayed in this document at that time as  
3 opposed to me trying to recite that for you.  
4 Q. When Alvarez became aware of the  
5 discount that we discussed and was in the  
6 presentation to the Creditors Committee, did  
7 Alvarez take any action or do anything with  
8 respect to the fact that there was a discount  
9 or a difference between the agreed value of  
10 the repo collateral and certain marks?  
11 MR. TAMBE: Objection to the form.  
12 A. No, again, I would characterize,  
13 you know, what we were doing at this time  
14 relaying information that had been given to us  
15 in connection with that transaction to our UCC  
16 constituency. Some aspects of which they may  
17 have known more than we did at the time  
18 because they had perhaps people involved as  
19 the deal was happening that weekend whereas we  
20 did not. Did we take action? This was not a  
21 priority at the time. We were not -- again,  
22 as it relates to Barclays, the TSA was our  
23 primary focus. Getting ourselves in a  
24 position where we could run the wind-down of  
25 this enormously large operation in a competent

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 knowledge, from the Committee express, you  
3 know, surprise about the fact that there was a  
4 difference in the value of the fed repo  
5 collateral agreed to by the parties for  
6 purposes of the deal and the -- some nominal  
7 prior Lehman marks?  
8 MR. TAMBE: Objection to form.  
9 A. You mean people sitting on the  
10 Committee? I didn't have a lot of  
11 communication with people sitting on the  
12 Committee.  
13 Q. That may be so but are you aware  
14 of anyone on the Committee expressing surprise  
15 about the fact that there was this delta?  
16 A. Not that I'm aware. Again, there  
17 may have been communications I'm not aware of.  
18 Q. Are you aware of anyone else who  
19 expressed surprise or indicated that that was  
20 news to them? Anyone at Alvarez or LBHI or  
21 anyone at this period of time?  
22 MR. TAMBE: Objection to form.  
23 A. My recollection during the first  
24 quarter of our administration of the estate,  
25 there was a gentleman from Houlihan, I believe

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Mike Fazio, who I think primarily indirectly</p> <p>3 through others I understood that he was</p> <p>4 expressing some concerns about the economics</p> <p>5 of the deal and whether it was ultimately in</p> <p>6 the best interest of the estate to have the</p> <p>7 deal done as it was papered. I -- you know.</p> <p>8 Q. Can you think of anything else</p> <p>9 other than that?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Was Mr. Fazio's expression of</p> <p>12 concern more general or particularly with</p> <p>13 respect to there being a delta between the</p> <p>14 agreed value of the -- we'll call it the</p> <p>15 discount as you've used the term.</p> <p>16 A. My best recollection is that Mr.</p> <p>17 Fazio was either -- attended or had heard</p> <p>18 firsthand about a meeting that I know has been</p> <p>19 depicted in the prior discovery Sun -- I</p> <p>20 believe it was Sunday night before the deal</p> <p>21 was closed Monday morning, where -- and I was</p> <p>22 in the deposition of Michael Klein who</p> <p>23 acknowledged that he had a depiction of the --</p> <p>24 a very high-level depiction of the deal that</p> <p>25 was written on the back of a manila envelope</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 that was shown to Mike and/or others at</p> <p>3 Houlihan.</p> <p>4 I remember Mike telling us that</p> <p>5 they, meaning as advisors to the Unsecured</p> <p>6 Creditors Committee, had been asked -- had</p> <p>7 asked Barclays and Lehman people for the</p> <p>8 details behind the difference between the</p> <p>9 marked values and what was determined to be</p> <p>10 the negotiated value as depicted on that</p> <p>11 envelope. And they were very unhappy with the</p> <p>12 fact that they had never gotten any details.</p> <p>13 They were promised the details at the time and</p> <p>14 they never got them. And I think that was</p> <p>15 part of what was underlying their concerns</p> <p>16 about the economics of the deal.</p> <p>17 Q. So they were aware of the delta</p> <p>18 but they wanted to get details about the delta</p> <p>19 further explained.</p> <p>20 A. Sure. If you're a fiduciary for</p> <p>21 the estate and you're aware of that you'd like</p> <p>22 to have empirical knowledge, empirical</p> <p>23 evidence of how it was derived rather than</p> <p>24 just, you know, somebody saying it was</p> <p>25 negotiated.</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. The sale transaction didn't</p> <p>3 require the deal to be a wash, did it?</p> <p>4 MR. TAMBE: Objection to form of</p> <p>5 the question.</p> <p>6 A. The sale transaction didn't</p> <p>7 require the deal to be a wash?</p> <p>8 Q. Okay. I'll rephrase that. Are</p> <p>9 you familiar with the term "wash"?</p> <p>10 A. Yes.</p> <p>11 Q. What does that term mean to you?</p> <p>12 A. Well, in the context I know where</p> <p>13 you're coming from, it's assets essentially</p> <p>14 equalled liabilities. And there was little to</p> <p>15 no exchange of economic value in the deal.</p> <p>16 Q. Okay. And little to no exchange</p> <p>17 of economic value, can you explain to me?</p> <p>18 A. Yeah. Wash assets equal</p> <p>19 liabilities, that's how I'm trying to give my</p> <p>20 understanding of what that concept means.</p> <p>21 Q. It was never your understanding</p> <p>22 there was something that sale transaction</p> <p>23 documents required that assets match</p> <p>24 liabilities; is that correct?</p> <p>25 A. I don't think it was ever --</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection to form of</p> <p>3 the question.</p> <p>4 A. I don't have any basis to think it</p> <p>5 was characterized as -- in that way in the</p> <p>6 sale documents. Although I would point out</p> <p>7 that the Asset Purchase Agreement dated</p> <p>8 October 16th, and I think this is depicted in</p> <p>9 our Rule 60 papers, it really does -- the end</p> <p>10 result of that appears to be assets equal</p> <p>11 liabilities as it relates to the securities</p> <p>12 and the comp and cure obligations being</p> <p>13 assumed. And then you've got an additional</p> <p>14 element of consideration if you want to look</p> <p>15 at it that way by virtue of, you know, other</p> <p>16 liabilities being assumed.</p> <p>17 Q. Have you done an analysis of the</p> <p>18 initial Asset Purchase Agreement to determine</p> <p>19 what the actual liabilities would have been</p> <p>20 and what the assets would have been?</p> <p>21 A. Well, what I'm describing I think</p> <p>22 is depicted in our Rule 60(b) motion. I can</p> <p>23 picture it now. There's a little table in the</p> <p>24 motion that depicts \$70 billion of long</p> <p>25 positions, 69 billion of short positions,</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 \$250 million acquisition price, and a \$750  
3 million profit participation, if you will, in  
4 the upside of the securities if they were sold  
5 for more than the negotiated price.

6 Q. Do you know whether the 70 billion  
7 long includes residential mortgages valued at  
8 50 percent of which valued at 3 billion?

9 A. My best recollection may not be  
10 completely accurate, is that the -- half of  
11 the mortgage securities were excluded assets,  
12 if I'm not mistaken, as depicted in the APA.

13 Q. Okay. But the 70 billion didn't  
14 include the 3 billion, 50 percent of the  
15 RESI's, correct?

16 A. That's my recollection, yes.

17 Q. Were you aware that Barclays had  
18 put out a press release before the deal closed  
19 saying that it was going to be accretive, the  
20 deal was going to be accretive for Barclays?

21 MR. TAMBE: Objection to the form  
22 of the question.

23 A. I first saw that press release in  
24 roughly Oct -- excuse me -- January of this  
25 year.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. We were engaged in March. I can't  
3 give you a specific date of when that  
4 activity --

5 Q. Is it still continuing?

6 MR. TAMBE: Again, I'd object to  
7 that and instruct you not to answer in  
8 terms of what you are doing, may have  
9 done, whether you're still doing it.

10 MR. THOMAS: Okay. Yeah, I mean,  
11 I disagree but I don't want to belabor  
12 it. You've got your instruction and I  
13 assume you're going to follow it.

14 Q. Can you tell me roughly how much  
15 time Alvarez spent on trying to value assets?

16 A. No, I can't.

17 Q. Was it -- I mean, just order of  
18 magnitude was it a one-week thing or two-month  
19 thing?

20 MR. TAMBE: Objection to the form  
21 of the question.

22 A. I have no characterization of it.

23 Q. So prior to that work -- so prior  
24 to March 2009 Alvarez never made any effort to  
25 go back and value any of the assets or

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. So Alvarez now is working on  
3 trying to value some of the assets for  
4 purposes of this litigation. Without getting  
5 into the results of that because your counsel  
6 has said that that's privileged, how long has  
7 Alvarez been doing that work?

8 MR. TAMBE: Objection to form of  
9 the question, and to your  
10 characterization that Alvarez is now  
11 working on trying to value some of the  
12 assets. What they're doing at the  
13 direction of counsel and how far they've  
14 come along and how much of it they've  
15 done, all of that is within the  
16 privilege.

17 MR. THOMAS: Okay. But not the  
18 dates.

19 Q. I mean, when did Alvarez start  
20 working on the general subject of valuing  
21 assets related to the sale transaction? Just  
22 the date. Rough date.

23 A. Sometime after Jones Day was  
24 engaged the best I recall.

25 Q. And -- March?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 liabilities that were part of the sales  
3 transaction; is that correct?

4 MR. TAMBE: Objection to the form  
5 of the question.

6 A. I don't know if I -- I don't think  
7 I'd accept that characterization if I  
8 understand it. You mentioned their both  
9 assets and liabilities. Our initial concerns  
10 about the economics of the deal actually were  
11 generated as a result of us closing the books  
12 as of the closing date -- excuse me -- as of  
13 the date of the bankruptcy closing the books  
14 and records on behalf of the LBHI estate and  
15 coming to some realization that the  
16 liabilities that were on the books for comp  
17 and call it cure kind of liabilities appear to  
18 be much lower than the amounts that were  
19 presumed to be the effective liabilities in  
20 the deal. So it was the liability side that  
21 really started our concerns.

22 Q. When was that?

23 A. Toward the end of December 2008.

24 Q. And what did you do as a result of  
25 those concerns?

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2 A. Well, what I did is I took  
3 direction from Brian Marsal and started a  
4 forensic team that was focused on the Barclays  
5 sale.

6 Q. And did you -- what was the result  
7 of that forensic team's work?

8 A. Well, as is probably obvious we  
9 recognized we needed legal counsel and engaged  
10 Jones Day in or about March of this year. And  
11 the end result of our joint effort in this  
12 process is evident in the Rule 60(b) motion.

13 Q. So we'll pick up on that in a  
14 minute but prior to March did Alvarez ever  
15 make any effort to try to value the assets  
16 transferred as part of the sale transaction?

17 A. There were probably analytical  
18 kind of exercises to evaluate the value of the  
19 assets. It was a preliminary, you know, sort  
20 of attempt to look at it. Obviously, by that  
21 time in early February as everybody knows  
22 Barclays had its annual earnings announcement  
23 which put sort of a spotlight on the idea that  
24 there was a very substantial gain on  
25 acquisition that gave us concern as to the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 anticipation of litigation or an  
3 anticipation of bringing claims  
4 exercise.

5 BY MR. THOMAS:

6 Q. And the assets that prompted this  
7 exercise on the books were the comp and cure  
8 amounts; is that correct?

9 A. Well, I guess I'd characterize it  
10 differently. Comp and cure are liabilities.

11 Q. I'm sorry. I misspoke.  
12 Liabilities.

13 A. Yes. My best recollection is that  
14 the initial concerns that arose on our part,  
15 on A&M's part, emanated from the liabilities  
16 side, an apparent overstatement of the  
17 liabilities. That's my best recollection.

18 Q. Let me show you another document  
19 we'll mark as 464A.

20 (Deposition Exhibit 464A, document  
21 bearing production numbers AM 002287  
22 through AM 002292, marked for  
23 identification as of this date.)

24 BY MR. THOMAS:

25 Q. Before I ask you about this

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2 ultimate economics of the deal. So we looked  
3 at that gain disclosure. We looked at, you  
4 know, tried to make sense out of it. Where  
5 was the gain derived, et cetera.

6 Q. And can you tell me anything about  
7 the results of your evaluation work prior to  
8 March in terms of what -- the amounts you came  
9 up with for any class of asset?

10 MR. TAMBE: By this point in time  
11 the work that was being done by Alvarez  
12 & Marsal is in anticipation potentially  
13 of litigation and claims and we have  
14 asserted work product privilege on any  
15 of that analysis that was done by A&M.

16 MR. THOMAS: Can you tell me as to  
17 what time?

18 MR. TAMBE: I think it would  
19 probably go back to the January time  
20 frame when they started looking at it  
21 from a forensic perspective as opposed  
22 to merely collecting assets and  
23 identifying assets which is what they  
24 were doing in the first quarter of their  
25 engagement when this becomes more of an

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 document, in your view would it have been  
3 possible to accurately value all of the assets  
4 transferred as part of the purchase agreement  
5 by the time of closing given the short period  
6 of time in the negotiation of the deal?

7 MR. TAMBE: Objection to the form  
8 of the question. Beyond the scope of  
9 the 30(b)(6).

10 A. I would almost reply that they  
11 were valued. There were values being ascribed  
12 at that time that depicted the value, for  
13 example, of the repo assets being  
14 approximately \$49.9 billion.

15 Q. Well, for example, the RESI's you  
16 mentioned were valued at \$6 billion. Do you  
17 think they were really worth \$6 billion?

18 MR. TAMBE: Objection to the form  
19 of the question.

20 A. I don't know which particular  
21 securities you're referring to. There's been  
22 a lot of confusion in my mind about what  
23 constitutes those RESI's. If you're referring  
24 to the RESI's that are referenced in the APA.

25 Q. Right. I mean, do you think those

<p style="text-align: right;">Page 170</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 could be easily valued during the week of the</p> <p>3 deal?</p> <p>4 MR. TAMBE: Objection to the form</p> <p>5 of the question and beyond the scope of</p> <p>6 the 30(b)(6).</p> <p>7 A. As I mentioned, I have a lot of</p> <p>8 uncertainty as to what securities are even</p> <p>9 being referred to there. So it's a</p> <p>10 difficult -- I can't even answer the question</p> <p>11 because I don't have a premise from which to</p> <p>12 answer.</p> <p>13 Q. So you weren't even sure which</p> <p>14 securities were in the deal.</p> <p>15 A. It's not clear to me, no. And</p> <p>16 when I say in the deal, I'm talking about the</p> <p>17 RESI assets referred to in the APA.</p> <p>18 Q. All right. Turning to 464A who is</p> <p>19 W. Gordon? William Gordon?</p> <p>20 A. He's an Alvarez &amp; Marsal employee.</p> <p>21 Q. And this appears -- this may just</p> <p>22 be a further chain that attaches some of the</p> <p>23 information from Weil but I just wanted to ask</p> <p>24 you about a couple other names on here. Who</p> <p>25 is Mary Karitsky?</p>	<p style="text-align: right;">Page 171</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. Mary Kariky.</p> <p>3 Q. Kariky.</p> <p>4 A. She's an Alvarez employee as well.</p> <p>5 Q. Okay. Were they also working on</p> <p>6 analyzing the sale transaction in terms of</p> <p>7 what assets went over?</p> <p>8 A. Yes. That was part of their</p> <p>9 mission, among I'm sure many other things at</p> <p>10 the time.</p> <p>11 Q. We talked a little bit earlier</p> <p>12 about this wash notion that appears in some of</p> <p>13 the litigation papers.</p> <p>14 Can you point to any part of the</p> <p>15 sales documents that require the deal to be</p> <p>16 anything like a wash, that place restrictions</p> <p>17 on what the amount of the assets and</p> <p>18 liabilities have to be?</p> <p>19 MR. TAMBE: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I thought we just discussed that.</p> <p>22 I described the depiction of the long and the</p> <p>23 shorts as described in the APA and how that</p> <p>24 balanced out.</p> <p>25 Q. Right. And you referred to the</p>
<p style="text-align: right;">Page 172</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 APA and your belief that maybe there was some</p> <p>3 balance there between long and short. That,</p> <p>4 of course, the APA had to get modified because</p> <p>5 Lehman couldn't deliver those assets. And so</p> <p>6 in terms of the transaction that actually went</p> <p>7 through, the purchase agreement that actually</p> <p>8 -- or the actual deal that was agreed to and</p> <p>9 closed, is there anything in there that you're</p> <p>10 aware of that in your mind could be considered</p> <p>11 to require that after some post-doc analysis</p> <p>12 that liabilities and assets had to somehow</p> <p>13 balance out?</p> <p>14 MR. TAMBE: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It's a very long question and I</p> <p>17 lost track of some of the characterizations</p> <p>18 early on and I'm not sure I accept some of the</p> <p>19 early characterizations that sort of formed</p> <p>20 the premise of it but...</p> <p>21 Q. Okay. You've described your kind</p> <p>22 of understanding of the term wash, and I'm</p> <p>23 asking you is there anything that you can</p> <p>24 point to in the sale agreement, in the</p> <p>25 purchase agreement that required the deal to</p>	<p style="text-align: right;">Page 173</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 be a wash?</p> <p>3 MR. TAMBE: Objection to form.</p> <p>4 A. And you don't want me to repeat; I</p> <p>5 assume, what I've already talked about in</p> <p>6 terms of the APA having an implied sort of</p> <p>7 balancing aspect to it? That's the primary</p> <p>8 thing I would look to.</p> <p>9 Q. Well, the terms you referred to in</p> <p>10 the APA came out of the deal because those</p> <p>11 assets couldn't be delivered, right?</p> <p>12 A. Well, that's one way to</p> <p>13 characterize it. Another way to think about</p> <p>14 it is that there wasn't even a specific</p> <p>15 listing of those assets at the time. That was</p> <p>16 people's best estimate of what was on the</p> <p>17 balance sheet of LBI, as I've gleaned from the</p> <p>18 discovery at this point. The idea that they</p> <p>19 couldn't be delivered may in my mind go too</p> <p>20 far.</p> <p>21 The nature of the assets in a</p> <p>22 broker/dealer are going to change day-to-day</p> <p>23 because of the typical machinations in and out</p> <p>24 of a broker/dealer. But there certainly were</p> <p>25 less assets available later in the week than</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 were there and believed to be there as of the  
3 time the APA was negotiated.  
4 Q. Right. The 70 billion longs  
5 weren't there or a lot of them weren't there  
6 later in the week; is that right?  
7 A. Some of those assets -- and it's  
8 dangerous for me to try to recharacterize  
9 what's been in discovery, but I think some of  
10 those assets simply weren't available because  
11 they were locked up at LBIE, which was under a  
12 separate administration at this point, the  
13 European broker/dealer. So there were issues,  
14 certainly, that caused a fair amount of  
15 confusion as I've seen around the -- which  
16 assets could and could not be transferred.  
17 Q. Um-hum. So other than your sense  
18 that there were some rough equivalency  
19 associated with some of the initial terms of  
20 the APA, is there anything else you can point  
21 to that required the deal to be a wash, as you  
22 say?  
23 MR. TAMBE: Objection to the form  
24 of the question.  
25 A. No, I think ultimately as the deal

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 communication of a concept that there was  
3 generally a wash. I know it was communicated  
4 as a wash kind of transaction to the Lehman  
5 board on Tuesday morning according to those  
6 minutes.  
7 Q. Okay. Why don't we go ahead and  
8 take a look at some of those minutes.  
9 (Pause on the record.)  
10 Q. Do you know who prepared the  
11 minutes of the Lehman board?  
12 A. Not specifically. Jeffrey  
13 Welligson I believe served as the secretary.  
14 Q. Was anyone there from Alvarez at  
15 the board meeting where this sale was being  
16 discussed?  
17 A. No.  
18 MR. THOMAS: Let me mark this  
19 document as 465A.  
20 (Deposition Exhibit 465A, document  
21 bearing production numbers LBHI 017667  
22 through LBHI 017673, marked for  
23 identification as of this date.)  
24 BY MR. THOMAS:  
25 Q. This is a document produced to us

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 changed, if I can use a -- what may seem like  
3 a gratuitous sort of characterization, it  
4 seemed like a free for all. It seemed like  
5 the confusion over the delivery of the assets  
6 that final night between JPM and Bank of  
7 New York caused people to go on a land grab,  
8 in a sense get everything they possibly could  
9 out of the entity that had any value and  
10 wasn't nailed down. That's -- the deal as it  
11 changed seemed to go that direction.  
12 Q. Just -- my question is just  
13 whether there's anything that you can point to  
14 that you think required the deal to somehow be  
15 a wash.  
16 MR. TAMBE: Objection to the form  
17 of the question.  
18 Q. Other than what you mentioned  
19 about the initial APA.  
20 A. Not specifically in the way the  
21 deal was papered, although I do recall that  
22 there was a characterization before the court  
23 that essentially spoke to that kind of  
24 concept. I don't remember -- I don't recall  
25 the exact words but I thought there was some

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 by LBHI. Do you recognize the document?  
3 A. Not this specific version of it.  
4 I've seen what appeared to me to be a final  
5 version of it. But I haven't seen the track  
6 change version that this represents.  
7 Q. Let me ask you to turn to page 5  
8 of the document.  
9 A. (Witness complies.)  
10 Q. There's -- in the second full  
11 paragraph at the end there's a bracket that  
12 says, "For LBHI, the transaction was described  
13 as a wash with Barclays assuming liabilities  
14 of 64 billion basically equivalent to the  
15 assets, 70 billion, plus assuming some  
16 employees and accounts."  
17 Do you see that?  
18 A. Yes.  
19 Q. Would you consider 70 billion  
20 versus 64 billion a wash?  
21 A. Well, in and of itself, no. But I  
22 would infer that they must be coming to the  
23 concept of a wash by presumably the additional  
24 obligations being incurred, assuming the  
25 employees and accounts.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. Those additional obligations don't  
3 add up to anywhere near \$6 billion, though, do  
4 they?  
5 MR. TAMBE: Objection to the form  
6 of the question.  
7 A. No. Not if they were depicted in  
8 a financial schedule or anything else. They  
9 totalled to 4.25 billion as I recall.  
10 Q. So how close does it have to be,  
11 the assets and liabilities, in your view, for  
12 you to consider it a wash?  
13 MR. GATTO: Object to the form.  
14 Beyond the scope of the 30(b)(6). He's  
15 not here to give you opinions and I  
16 instruct him not to answer.  
17 MR. THOMAS: They're valuations --  
18 MR. TAMBE: Yeah.  
19 MR. THOMAS: -- of the assets and  
20 liabilities --  
21 MR. TAMBE: He can talk about  
22 valuations.  
23 MR. THOMAS: -- which is under  
24 the scope of like five topics.  
25 MR. TAMBE: He can talk about

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 from Alvarez at the board meeting?  
3 A. No.  
4 Q. Was anyone from Alvarez in any way  
5 involved in the preparation for that board  
6 meeting?  
7 A. No. Not to my knowledge.  
8 Q. All right. If you would turn two  
9 pages prior to page 3 of the same document.  
10 A. (Witness complies.)  
11 Q. The second full paragraph states,  
12 "Mr. Roberts..." do you know Mr. Roberts to be  
13 from Weil Gotshal?  
14 A. I would expect that to be  
15 Tom Roberts. Was he in attendance? I believe  
16 he was.  
17 Yes. I would expect that to be  
18 Tom Roberts.  
19 Q. Okay. "Mr. Roberts resumed by  
20 describing that it is a condition to the  
21 transaction that eight specific firm employees  
22 enter into employment agreements with  
23 Barclays. He stated that Mr. McGee was one of  
24 those employees. So interested firm employees  
25 were involved in the transaction negotiations

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 valuations but he's not going to give  
3 you opinions about what is and what  
4 isn't a wash.  
5 MR. THOMAS: So you're instructing  
6 him not to answer any questions about  
7 opinions about a wash?  
8 MR. TAMBE: About opinions, yeah.  
9 He can give you -- he's already  
10 described to you what he believes a wash  
11 to be. He's given you his understanding  
12 of what he believes a wash to be and  
13 he's given you his understanding of this  
14 document.  
15 BY MR. THOMAS:  
16 Q. Do you understand who prepared  
17 this document?  
18 A. No.  
19 Q. Do you understand how the  
20 \$64 billion calculation was made?  
21 A. No.  
22 Q. Let me ask you to turn -- I'm  
23 sorry. I may have asked you -- I don't know  
24 if I asked this or not. Was anyone from  
25 Alvarez -- I think I did ask it. Was anybody

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 on behalf of the firm. Mr. Roberts reported  
3 that Mr. McDade was subsequently advised by  
4 Barclay that his agreement of continued  
5 employment was a condition of the transaction.  
6 Mr. Roberts reported that Weil Gotshal &  
7 Manages and Simpson Thacher & Bartlett then  
8 told Barclays that after numerous discussions  
9 concerning Mr. McDade's employment, all the  
10 terms of the firm transaction were completed."  
11 LBHI understood that at least some  
12 of the executives negotiating the deal with  
13 Barclays were also being offered employment by  
14 Barclays; is that correct?  
15 A. LBHI -- going back to the  
16 characterization I've offered before, during  
17 this time certainly LBHI was in the middle of  
18 this before the closing. They were still  
19 employees of LBHI and LBI. So, yes, LBHI  
20 would have been aware of this. Now, just to  
21 be clear on how --  
22 Q. That includes the LBHI board, too,  
23 right?  
24 A. Well, the LBHI board, to the  
25 extent it heard this characterization, would

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 have been aware of this.</p> <p>3 Q. And Alvarez was aware of this</p> <p>4 fact, is it fair to say, at some point</p> <p>5 certainly within a week or two of the closing?</p> <p>6 MR. TAMBE: Objection to the form</p> <p>7 of the question.</p> <p>8 A. I think Alvarez's knowledge of an</p> <p>9 issue like this would have been limited to</p> <p>10 anything we heard in a court hearing on the</p> <p>11 19th. I think we had some people there. I</p> <p>12 don't know that we had any particular</p> <p>13 knowledge or understanding of who was doing</p> <p>14 the negotiations and what their terms of</p> <p>15 employment were or were not --</p> <p>16 Q. Um-hum.</p> <p>17 A. -- at the time.</p> <p>18 Q. Okay. And I'm under topic -- depo</p> <p>19 topic 8 now concerning Lehman's understanding.</p> <p>20 Assuming executives were being offered</p> <p>21 employment by Barclays including offers of</p> <p>22 bonus payments for 2008, Lehman understood</p> <p>23 that while during this week the deal was being</p> <p>24 negotiated, it was -- I mean, Lehman, the</p> <p>25 board, others at Lehman understood that the</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 officers who were negotiating the deal were</p> <p>3 being offered employment and bonuses by</p> <p>4 Barclays and indeed employing a lot of these</p> <p>5 people was a condition of doing the deal for</p> <p>6 Barclays since they were trying to buy the</p> <p>7 business?</p> <p>8 MR. TAMBE: Objection to the form</p> <p>9 of the question.</p> <p>10 A. All right. I'm going to try to</p> <p>11 make sure I understand the question there.</p> <p>12 Again, I lose track when it goes on.</p> <p>13 The Lehman -- you know, the same</p> <p>14 thing Lehman versus Alvarez &amp; Marsal. Lehman</p> <p>15 people were clearly knowledgeable about this.</p> <p>16 They were the people that were getting some</p> <p>17 offers to some extent. They were the people</p> <p>18 who were right in the middle of this. All</p> <p>19 those people that we're talking about are no</p> <p>20 longer employed by LBHI. They've gone on to</p> <p>21 Barclays or they've gone their own way.</p> <p>22 So the short answer to your</p> <p>23 question is yes, LBHI was aware of this at the</p> <p>24 time. They were inherently aware because they</p> <p>25 were part of it.</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in addition to LBHI being</p> <p>3 aware of this because officers involved in it</p> <p>4 were aware of it, the LBHI board was aware of</p> <p>5 that and LBHI's outside counsel was aware of</p> <p>6 that, too, correct?</p> <p>7 A. I would suggest asking members of</p> <p>8 the board and members of Weil Gotshal</p> <p>9 specifically what they're aware of. Anybody</p> <p>10 can read this and accept the characterizations</p> <p>11 there to the extent this accurately depicts</p> <p>12 what was talked about in a board meeting.</p> <p>13 People who were there heard that. I mean,</p> <p>14 there's no arguing that. I just -- I don't</p> <p>15 want to characterize anything beyond that</p> <p>16 because I don't know anything beyond that.</p> <p>17 Q. Okay. But you are the</p> <p>18 representative of LBHI on this topic.</p> <p>19 MR. TAMBE: And he's answered with</p> <p>20 respect to LBHI. He's not here as a</p> <p>21 representative of Weil Gotshal.</p> <p>22 MR. THOMAS: Okay.</p> <p>23 Q. Let me go ahead and show you</p> <p>24 another document we'll mark as 466A.</p> <p>25 (Deposition Exhibit 466A, document</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 bearing production numbers LBHI 017761</p> <p>3 through LBHI 017764, marked for</p> <p>4 identification as of this date.)</p> <p>5 BY MR. THOMAS:</p> <p>6 Q. Let me ask you, is this a document</p> <p>7 that you've seen before?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Okay. If you would turn to the</p> <p>10 third page, please. The third full paragraph.</p> <p>11 70 billion of assets at LBI, 64 billion of</p> <p>12 liabilities, so paying the BD 94 percent of</p> <p>13 assets. Do you have an understanding what</p> <p>14 that's saying, so paying the BD 94 percent of</p> <p>15 assets?</p> <p>16 MR. TAMBE: Objection to form.</p> <p>17 A. No, I don't understand. If I</p> <p>18 reflected on it for a while, perhaps but</p> <p>19 sitting here right now, no. I'm guessing BD</p> <p>20 means broker/dealer but I don't know what the</p> <p>21 94 percent relates to.</p> <p>22 Q. The last sentence there says, "If</p> <p>23 we don't do this deal today, the broker/dealer</p> <p>24 would have to declare bankruptcy tonight, at</p> <p>25 which point all employees would leave and</p>



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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 there will be nothing."  
3 Was it Alvarez's understanding  
4 that this was a waste -- LBI was a wasting  
5 asset and that some kind of deal needed to be  
6 done right away?  
7 MR. TAMBE: Objection to the form  
8 of the question.  
9 A. I don't know -- Alvarez & Marsal  
10 wasn't involved in the deal itself. I think  
11 anybody recognizes that a broker/dealer with a  
12 bankrupt parent can't last long. I don't  
13 think any reasonable person would argue with  
14 that. Just to -- rather than accepting the  
15 characterization that it was a wasting asset,  
16 as it relates to the estate itself, now, you  
17 look at that and, you know, there was a net  
18 give-away of several billion dollars of  
19 economic value as a result of this deal.  
20 So I wouldn't accept the  
21 characterization that it was a wasting asset.  
22 I mean, the creditors were ultimately better  
23 off if you just let LBI go down with LBHI.  
24 Q. What is the basis for your saying  
25 there was a net give-away of several billion

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 liabilities and any excess of assets acquired,  
3 fair market value of assets acquired versus  
4 liabilities assumed equates to economic gain.  
5 So accounting gain equals economic gain in  
6 this vein.  
7 Q. Other than what you've  
8 identified --  
9 MR. TAMBE: Can we just tie this  
10 down to some 30(b)(6) topic that you've  
11 identified. He's not going to testify  
12 on behalf of Barclays. You had your  
13 folks to do that.  
14 MR. THOMAS: First of all, I'm  
15 directly following up on what he just  
16 testified.  
17 MR. TAMBE: That's fine but you  
18 can't exceed the scope of the 30(b)(6)  
19 even if you're following up on something  
20 he told you.  
21 MR. THOMAS: And that's -- sorry.  
22 And it does relate to the valuations and  
23 due diligence in terms of what the  
24 valuations were going forward after the  
25 deal. I mean, I can stop and go tie it

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 dollars?  
3 A. The Barclays disclosure in their  
4 February 6 financial announcement that they  
5 made \$4.2 billion on the acquisition of LBI.  
6 Q. Anything else other than that?  
7 A. There was also characterizations  
8 by Mr. Clarkson in his deposition that  
9 acknowledged the ultimate gain -- accounting  
10 gain was closer to 4.9 or \$5 billion. That  
11 accounting gain equates to economic value.  
12 Q. You have a good understanding of  
13 what went into that accounting gain?  
14 A. Reasonably so, yes. I consider  
15 myself expert on that issue of accounting.  
16 Q. And you've studied that -- the  
17 Barclays papers?  
18 A. I've reviewed the Barclays papers  
19 there, yes.  
20 Q. And can you explain what you mean  
21 when you say an accounting gain?  
22 A. Accounting gain for purposes of  
23 acquisition accounting equates to economic  
24 gain. The accounting rules are driven off of  
25 determining the fair value of the assets and

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 to several topics but --  
3 MR. TAMBE: I don't think it does.  
4 I think at the end of the day how  
5 Barclays accounted for the gain doesn't  
6 tie into the valuation from LBHI's  
7 perspective.  
8 MR. THOMAS: When his answer to  
9 clearly a topic question of the  
10 valuation goes to Barclays accounting  
11 report, then I'm allowed to at least  
12 explore the basis of his knowledge.  
13 MR. TAMBE: And I'll let you do  
14 that but if you start going into the  
15 accounting theory now and the accounting  
16 theory behind Barclays gain, I think  
17 you're going too far afield.  
18 MR. THOMAS: Once again, he used a  
19 term in his answer. Okay? I didn't go  
20 out there. He used the term. I want  
21 him to explain what he meant by that.  
22 MR. TAMBE: And I allowed him to  
23 do that.  
24 MR. THOMAS: Okay. Well, I think  
25 we've probably exhausted this.

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Okay.</p> <p>3 Q. Is there anything other than your</p> <p>4 interpretation of the Barclays work and the</p> <p>5 thing with Mr. Clackson you cited that you</p> <p>6 believe indicates that there was a gain for</p> <p>7 Barclays?</p> <p>8 A. Is there anything else beyond</p> <p>9 Barclays admission in a public filing?</p> <p>10 Q. Yeah. I'm not questioning it. I</p> <p>11 just want to know. Let me ask you differently</p> <p>12 because -- did Alvarez do any similar type of</p> <p>13 analysis as to what the actual agenda was?</p> <p>14 A. Certainly not at the time that</p> <p>15 that announcement came out in February.</p> <p>16 Q. Okay. Did anyone ask Alvarez to</p> <p>17 say, hey, we have this notion that assets were</p> <p>18 supposed to roughly equal liabilities. Could</p> <p>19 you do an analysis in October, November,</p> <p>20 December to see whether the assets and</p> <p>21 liabilities really balanced out?</p> <p>22 A. I think we've covered this ground</p> <p>23 generally but we didn't undertake a true</p> <p>24 forensic valuation of the deal until January</p> <p>25 of 2009.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Um-hum.</p> <p>3 MR. THOMAS: Why don't we take a</p> <p>4 five-minute break now.</p> <p>5 MR. TAMBE: Okay.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 2:27. We are going off the record.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 2:42. We are back on the record.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q. Mr. Kruse, let me ask you to turn</p> <p>13 back to Exhibit 464A, an e-mail from</p> <p>14 William Gordon from Alvarez. And the second</p> <p>15 page is an attachment which is AM 2294, the</p> <p>16 Bates number, and up at the top where it says</p> <p>17 "All exchange-traded derivatives (and any</p> <p>18 property that may be held in security</p> <p>19 obligations under such derivatives)."</p> <p>20 Do you understand the</p> <p>21 parenthetical to be confirming that the sale</p> <p>22 transaction was transferring the</p> <p>23 exchange-traded derivatives and any collateral</p> <p>24 associated with the delivery of the</p> <p>25 derivative?</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 MR. TAMBE: Objection to form.</p> <p>3 A. Security and collateral to me</p> <p>4 probably have the same meaning in that context</p> <p>5 so I would have to say yes.</p> <p>6 Q. Did Alvarez ever attempt to value</p> <p>7 the exchange-traded derivatives and collateral</p> <p>8 that were transferred to Barclays as part of</p> <p>9 the sale transaction?</p> <p>10 A. I thought we covered this.</p> <p>11 Q. Okay. Other than -- prior to</p> <p>12 March, and we may have, apologies, but did you</p> <p>13 ever attempt to value the amount of the</p> <p>14 derivatives in the collateral?</p> <p>15 MR. TAMBE: Objection. Asked and</p> <p>16 answered. Object to form.</p> <p>17 A. No. Not that I'm aware of.</p> <p>18 Q. You accepted that there would be</p> <p>19 some amount of value associated with the</p> <p>20 derivatives and collateral, is that fair?</p> <p>21 A. I have no basis to answer that.</p> <p>22 Q. Let me show you another document</p> <p>23 we'll mark as 467A.</p> <p>24 (Deposition Exhibit 467A, document</p> <p>25 bearing production numbers HHR 00006469</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 with attachment, marked for</p> <p>3 identification as of this date.)</p> <p>4 BY MR. THOMAS:</p> <p>5 Q. This is an e-mail among a number</p> <p>6 of people, Weil, the trustee, and a couple</p> <p>7 people at Lehman. Do you recognize this</p> <p>8 document?</p> <p>9 A. I don't recall having seen it.</p> <p>10 Q. Okay. Do you know who Brett</p> <p>11 Beldner is?</p> <p>12 A. No.</p> <p>13 Q. You know who Martin Kelly is?</p> <p>14 A. Yes.</p> <p>15 Q. On the attachment to this e-mail,</p> <p>16 which is described in the e-mail itself as a</p> <p>17 draft LBI balance sheet reflecting unaudited</p> <p>18 estimates pre and post Barclays transaction,</p> <p>19 and on the attached balance sheet under</p> <p>20 inventory, do you see derivatives there</p> <p>21 indicating a value of 3.6?</p> <p>22 A. Yes, I see that.</p> <p>23 Q. Okay. All right. And does</p> <p>24 this -- were you ever aware of any kind of</p> <p>25 valuation of derivatives in that general</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 range?  
3 A. I don't recall. To me  
4 exchange-traded derivatives, they are what  
5 they are. They're exchange traded. So  
6 there's, you know, an active market for them  
7 as I infer.  
8 Q. Is your point that because there's  
9 an active market for them, their price would  
10 be whatever they trade at?  
11 A. Yes.  
12 Q. I mean, I guess you have no basis  
13 for denying that the derivatives and  
14 collateral transferred to Barclays had  
15 significant economic value associated with it?  
16 A. I have no basis for commenting on  
17 that. I know obviously it's part of the deal  
18 as it's summarized by Weil in that e-mail.  
19 Q. Let me show you a document that's  
20 been previously marked as Exhibit 442. It's a  
21 large document, and I'm going to ask you about  
22 something at the top of page 47. You're  
23 welcome to flip a little before and a little  
24 after if you want.  
25 (Document review.)

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. To my knowledge, Weil Gotshal  
3 doesn't remember where they got the number.  
4 Q. Do you have any further knowledge  
5 on that?  
6 A. No.  
7 Q. When you look at the number at the  
8 top of page 47, it says -- Ms. Fife, Weil  
9 Gotshal, speaking to the court, "So originally  
10 we were selling assets that had a value of  
11 70 -- approximately \$70 billion and today,  
12 Your Honor, we're only selling assets that  
13 have a value of \$47.4 billion."  
14 The \$70 billion, do you understand  
15 that to be referring to subsection D of the  
16 list of purchased assets in the initial APA?  
17 MR. TAMBE: Objection to form.  
18 A. Just to be clear, I should go back  
19 and look at subsection D of the APA.  
20 (Document review.)  
21 A. Yes. The long positions.  
22 Q. Okay. And from your read of this,  
23 would this be saying that the long positions  
24 are now down to 47.4?  
25 MR. TAMBE: Objection to the form

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. And I'd like to ask you, going  
3 back to this 47.4 figure -- and as I  
4 understand it, neither LBHI or Alvarez are  
5 aware of how that 47.4 figure was calculated;  
6 is that right?  
7 A. Alvarez is not. LBHI, again, I  
8 think the employees that have gone over to  
9 Barclays, to the extent there is knowledge,  
10 would be in the best position to address that.  
11 Q. But in terms of the knowledge that  
12 LBHI through documents --  
13 A. Yeah, the knowledge currently at  
14 resident in the estate, no, there is no  
15 knowledge about how that number is derived.  
16 Q. Did you ask anyone at Weil Gotshal  
17 how it was derived?  
18 A. I did not directly. I think Jones  
19 Day has had discussions with them.  
20 Q. Do you have any knowledge for us  
21 today about the 47.4 as an LBHI designee on  
22 this figure?  
23 MR. TAMBE: If you agree that's  
24 not going to be deemed a waiver.  
25 MR. THOMAS: Agreed.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 of the question.  
3 A. It says what it says. But I don't  
4 think it's necessarily appropriate to equate  
5 70 billion in value going down to 47.4 billion  
6 in value. The mix of securities is different  
7 between the APA number and this number I would  
8 assume.  
9 Q. Well, the 70 billion would not be  
10 all of the assets that Barclays was going to  
11 acquire under the initial Asset Purchase  
12 Agreement, correct?  
13 A. The 70 billion --  
14 Q. The 70 billion long, subsection D  
15 of the purchased asset list did not constitute  
16 all of the assets that Barclays was going to  
17 obtain in the initial Asset Purchase  
18 Agreement, right?  
19 A. No, of course not. There's  
20 obviously numerous subsections that delineate  
21 the purchased assets.  
22 Q. Right. For example, one of the  
23 other subsections was 50 percent of the RESIs,  
24 right?  
25 A. Yes.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. And the total RESIs at that time  
3 add a Lehman value of \$6 billion  
4 approximately; is that right?  
5 MR. TAMBE: Objection to the form  
6 of the question.  
7 A. I think we've covered this. And,  
8 again, I've got confusion as to what  
9 constituted the RESIs. I've never seen a real  
10 separate stand-alone list of what those RESIs  
11 were and which CUSIPS made up that number. I  
12 could rattle off what I do recall about it. I  
13 know on the financial schedule attached --  
14 that was referred to in the APA, I believe  
15 mortgage assets are stated at 2.7 billion but  
16 I --  
17 Q. Was that mortgage assets or half  
18 of the mortgage assets?  
19 A. My vague recollection is that that  
20 is half, but I'm not a hundred percent  
21 certain.  
22 Q. Okay. But, in any event, whether  
23 it be 2.7 billion or 3 billion, that was  
24 separate from the 70 billion subsection D long  
25 positions as listed out in the Asset Purchase

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 as being Alvarez people.  
3 Q. And this is dated September 22nd,  
4 which is -- 2008, the date of closing. Can  
5 you describe what work this is a part of?  
6 MR. TAMBE: Objection to the form  
7 of the question.  
8 A. Well, if I understand what you're  
9 asking, I think it would be an attempt early  
10 on to categorize and inventory the assets that  
11 were transferred to Barclay so that we knew  
12 what we were obligated to deal with in the  
13 administration of the estate versus what we  
14 were not obligated to deal with.  
15 Q. And why was it important for  
16 Alvarez to figure that out?  
17 A. It's self-evident to me. I mean,  
18 our mission was to administer the wind-down of  
19 the Lehman Brothers estate. You've got to  
20 know what assets are yours in order to begin  
21 that process.  
22 Q. If you would turn to the last page  
23 of this exhibit. It says Holdings Barclays  
24 Deal up at the top.  
25 Do you see that?

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Agreement?  
3 A. Yeah, I believe that's the  
4 understanding I got actually from the Steven  
5 Berkenfeld deposition.  
6 Q. And from looking at the -- that's  
7 consistent with your reading of the APA,  
8 correct?  
9 A. Yes.  
10 Q. Which is a number of different  
11 assets.  
12 MR. THOMAS: Let me go ahead and  
13 mark another document. It will be 468A.  
14 (Deposition Exhibit 468A, document  
15 bearing production numbers AM 004734  
16 through AM 004738, marked for  
17 identification as of this date.)  
18 BY MR. THOMAS:  
19 Q. This is an e-mail from Jamie  
20 Schwarz. Is that someone who works for  
21 Alvarez?  
22 A. I believe so.  
23 Q. And to a number of people that  
24 work at Alvarez?  
25 A. Yes, I recognize all these people

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. Under the included assets, the  
4 fourth bullet point, it says Trading Assets,  
5 47 billion long, and then it lists certain  
6 securities underneath it.  
7 A. Yes.  
8 Q. Would that be consistent with the  
9 notion that the 47 billion number was related  
10 to subsection D of the purchased asset list?  
11 A. Yes. The terminology is  
12 consistent.  
13 Q. Does this refresh your  
14 recollection as to whether it was Alvarez's  
15 understanding that the \$47 billion figure was  
16 related not to the total of all assets in the  
17 deal but to what had become of the \$70 billion  
18 long position?  
19 MR. TAMBE: Objection to the form  
20 of the question.  
21 A. That's a reasonable inference to  
22 me, yes. When I read the testimony, I  
23 assumed, because she started talking about  
24 70 billion, she was talking about the  
25 corollary of that a few days later. So I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 would -- that would be my inference on the  
3 face of the court transcript.  
4 Q. Thank you.  
5 When was the -- so there was no  
6 analysis of the deal by Alvarez prior to  
7 closing?  
8 A. No.  
9 Q. Okay. Sorry I'm pausing but I'm  
10 actually cutting stuff out. So it's a  
11 productive pause.  
12 (Pause on the record.)  
13 Q. Let's move to the cure and comp  
14 figures, which I believe is one of the depo  
15 topics.  
16 Can you tell me everything you  
17 know either in your capacity as the LBHI or  
18 Alvarez witness about how the comp figure  
19 referred to in the purchase agreement was  
20 derived?  
21 A. At what point in time? I'm  
22 just -- I want to make sure -- the topics seem  
23 to focus on what we knew at the time the deal  
24 was being done, and I think we've established  
25 we knew nothing about this deal at the time.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 the number was derived.  
3 Q. Other than just kind of reading  
4 testimony and litigation materials, do you  
5 have any knowledge as to how that was -- the  
6 comp number was derived, such as by speaking  
7 with people at Lehman or speaking with people  
8 at Alvarez or review of Lehman documents?  
9 A. Well, I'm not familiar and I could  
10 be not remembering this correctly, but I don't  
11 recall that there was any sort of empirically  
12 derived build-up of how the number was put  
13 together at that time. I've never seen a  
14 schedule that says here's our comp accrual.  
15 Here's how we're building this up for purposes  
16 of a negotiation what the number should be. I  
17 don't have an understanding of that kind of  
18 support for it.  
19 Q. Um-hum. Was it your understanding  
20 that the comp figure included severance as  
21 well as bonuses?  
22 MR. TAMBE: Objection to the form  
23 of the question.  
24 A. No. I think severance is in a  
25 separate section of the agreement. Severance

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 So at what point in time? You know, there's  
3 been a lot of discovery on that topic. I'm  
4 just trying to narrow down what you want from  
5 me.  
6 Q. Okay. Let's start with -- let's  
7 start with what you know now at any time. So  
8 your total knowledge of what the comp figures  
9 were.  
10 A. Total knowledge of what the comp  
11 figures were. Do you mean total knowledge of  
12 how it was derived in the context of the deal?  
13 Q. Yes.  
14 A. Well, our current knowledge is  
15 embodied in the discovery and Rule 60(b)  
16 motion and the exhibits thereto, but if I can  
17 try to characterize that as best I can sitting  
18 here now, I think there was real confusion in  
19 the record thus far as to whether that was  
20 derived by Lehman people and given to Barclays  
21 or whether it was a negotiated amount. I know  
22 I've heard in some ways contradictory  
23 testimony from people as to how they derived  
24 that number. And I have some lack of clarity  
25 sitting here even today as to specifically how

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 is 9.1(b), if I'm not mistaken. Bonus is  
3 discussed in 9.1(c). So I think it's a  
4 separate concept, as I understand it.  
5 Q. Let me go ahead and show you a  
6 document we'll mark as 469A.  
7 (Deposition Exhibit 469A, document  
8 bearing production numbers  
9 BCI-EX-00115450 through BCI-EX-00115462,  
10 marked for identification as of this  
11 date.)  
12 BY MR. THOMAS:  
13 Q. Do you recognize this document?  
14 A. I believe I've seen this, yes.  
15 Q. And when did you see it?  
16 A. I would have seen this in the  
17 course of the Rule 2004 discovery motion as I  
18 best recall.  
19 Q. I think I asked you before. Brett  
20 Beldner, do you know if he's still at Lehman?  
21 A. I don't know.  
22 Q. Okay. Who is Robert Azaron?  
23 A. He was a Lehman employee. I  
24 assume he still is but I don't know that.  
25 Q. And Marie Stewart?

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know that name.</p> <p>3 Q. Paragraph 6 here says the comp</p> <p>4 accrual and cure payment accruals are just</p> <p>5 estimates. And then it says comp for a year</p> <p>6 should probably not be the full accrual and</p> <p>7 cure payment should be actual.</p> <p>8 Do you understand what the</p> <p>9 parenthetical means?</p> <p>10 A. Other than just the English</p> <p>11 interpretation of what it says, I don't have</p> <p>12 any particular insight about it, no.</p> <p>13 Q. Okay. On the next page for cure</p> <p>14 payments it says Placeholder for actual</p> <p>15 accrual.</p> <p>16 Do you see that?</p> <p>17 A. Where are you?</p> <p>18 Q. I'm sorry. I'm looking at the</p> <p>19 wrong document.</p> <p>20 MR. TAMBE: The Bates number?</p> <p>21 MR. THOMAS: Hold on. I have the</p> <p>22 wrong -- let me see if I can find it.</p> <p>23 Well, you may get a pass on this</p> <p>24 document.</p> <p>25 Q. All right. Can you describe at</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 all the process at Lehman for how the bonus</p> <p>3 number was calculated other than based on your</p> <p>4 reading of litigation materials?</p> <p>5 A. The process that Lehman employed</p> <p>6 in the ordinary course?</p> <p>7 Q. Yes.</p> <p>8 A. Of computing its compensation</p> <p>9 accrual?</p> <p>10 Q. Sure.</p> <p>11 A. I know I've been in conversations</p> <p>12 around this. The best of my recollection</p> <p>13 sitting here today, I know that they -- for</p> <p>14 the cash portion Lehman has had a cash and a</p> <p>15 stock portion of their bonus that went to</p> <p>16 their people in any given year. The cash</p> <p>17 portion was accrued ratably through the year.</p> <p>18 As I understand it, the stock portion vested</p> <p>19 at a given date after the end of the year and</p> <p>20 therefore wasn't part of the accrual. I've</p> <p>21 heard I think Ian Lowitt testified in his</p> <p>22 deposition on this particular subject and he's</p> <p>23 in a much better position than I am to get</p> <p>24 that characterization correct.</p> <p>25 Q. Um-hum. And are you -- now, as</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 part of the forensic analysis you did when you</p> <p>3 became concerned over these assumed</p> <p>4 liabilities, did you determine how much</p> <p>5 Barclays actually spent on compensation in</p> <p>6 2008 for the Lehman employees that came over?</p> <p>7 A. We had no way of knowing what</p> <p>8 Barclays spent on compensation.</p> <p>9 Q. Okay. Were you aware that</p> <p>10 Barclays paid a higher percentage of cash</p> <p>11 compensation as compared to Lehman?</p> <p>12 A. I've come to the realization</p> <p>13 seeing the employment agreements in --</p> <p>14 produced in discovery.</p> <p>15 Q. And so even if there can be total</p> <p>16 compensation is going to be the same as Lehman</p> <p>17 Brothers and Barclays, Barclays would have to</p> <p>18 accrue more because they pay more in cash</p> <p>19 versus Lehman who is going to pay a higher</p> <p>20 percentage in Lehman stock; is that fair?</p> <p>21 A. Well, I don't know how Barclays</p> <p>22 accounts for it. I don't know if they have</p> <p>23 that same distinction between cash and stock.</p> <p>24 I think from an accounting standpoint it</p> <p>25 depends on the terms of the stock grants and</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 how they inure or accrue or vest to the</p> <p>3 employee. If it's a cliff vesting, you may</p> <p>4 not record them until after they're granted.</p> <p>5 It just depends on the facts and</p> <p>6 circumstances. I don't know how Barclays</p> <p>7 accounts for that.</p> <p>8 Q. And with respect to the cure, the</p> <p>9 assumption of the compensation requirement or</p> <p>10 liability, what with respect to compensation</p> <p>11 gave you concern?</p> <p>12 A. Well, I think the insight in that</p> <p>13 is embodied in the letter that I think Brian</p> <p>14 Marsal sent on February 19th to Jonathan</p> <p>15 Hughes at Barclays. And in that letter we --</p> <p>16 it gives a sense of what we're seeing in the</p> <p>17 books and records of Lehman at the time as to</p> <p>18 how -- what was on the books for compensation,</p> <p>19 and it's not close to \$2 billion. So we're</p> <p>20 just asking the question to Barclays, help us</p> <p>21 understand this.</p> <p>22 Q. In terms of the cure and</p> <p>23 transaction payment amounts that assumed the</p> <p>24 liability, do you know how that was</p> <p>25 calculated?</p>

<p style="text-align: right;">Page 210</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sorry. The cure?</p> <p>3 Q. Do you know how they came up with</p> <p>4 the cure amount?</p> <p>5 A. In the context of the deal --</p> <p>6 Q. Yes.</p> <p>7 A. -- and how it was depicted in</p> <p>8 the -- for example, the financial schedule?</p> <p>9 Q. The 1.5 billion that was</p> <p>10 referenced to the court.</p> <p>11 A. Yeah. The reference as 1.5 in the</p> <p>12 court as we know is referenced as 2.25 billion</p> <p>13 in the financial schedule. Again, a lot of</p> <p>14 ambiguity in the record as I currently</p> <p>15 interpret it as to how that number was</p> <p>16 derived. At a minimum it appears to have been</p> <p>17 dramatically overstated as to what the actual</p> <p>18 cost in my view was.</p> <p>19 Q. You understood that it was on the</p> <p>20 face of the agreement and, as mentioned to the</p> <p>21 court, it was a kind of a maximum estimate of</p> <p>22 a maximum potential exposure.</p> <p>23 MR. TAMBE: Objection to form.</p> <p>24 Q. I mean, Barclays could have</p> <p>25 incurred zero cure under the terms of the</p>	<p style="text-align: right;">Page 211</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 agreement. What was estimated was a maximum</p> <p>3 potential exposure, correct?</p> <p>4 A. I don't know if that's how it's</p> <p>5 cure -- I don't think it's characterized as</p> <p>6 the maximum potential exposure. It might be.</p> <p>7 I just don't recall that.</p> <p>8 Q. Okay. I mean, it certainly wasn't</p> <p>9 something -- I mean, you don't understand that</p> <p>10 Barclays had determined at that point in time</p> <p>11 what contracts it was going to assume, right?</p> <p>12 A. I understand that process was</p> <p>13 ongoing after the closing to some extent.</p> <p>14 Q. But prior to the closing time, I</p> <p>15 mean, you had no idea which, if any, contracts</p> <p>16 Barclays was going to assume, correct?</p> <p>17 A. I've seen indications that appear</p> <p>18 to me to be coming from preclosing documents</p> <p>19 that would suggest there were people who knew</p> <p>20 that that liability was grossly overstated at</p> <p>21 \$1.5 billion.</p> <p>22 Q. But, again, it wasn't the sort of</p> <p>23 liability that was going to be taken on.</p> <p>24 Would you agree it's a potential exposure</p> <p>25 because Barclays could choose how many and</p>
<p style="text-align: right;">Page 212</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 which contracts it wanted to assume?</p> <p>3 A. You probably don't need me to</p> <p>4 characterize how it's laid out in the</p> <p>5 agreement. I agree it's not a hard and fast</p> <p>6 number in the agreement. It's an estimate as</p> <p>7 characterized.</p> <p>8 Q. Well, I'm asking you in terms of</p> <p>9 your understanding, what LBHI's understanding</p> <p>10 was prior to closing and after closing as to</p> <p>11 whether that was an estimate of supposedly</p> <p>12 what was going to be actually incurred or was</p> <p>13 it simply an estimate of potential exposure?</p> <p>14 A. I'm not sure I can make that</p> <p>15 distinction. It was -- you would expect a</p> <p>16 liability to be estimated to your best</p> <p>17 efforts. It doesn't appear to me that that</p> <p>18 was done.</p> <p>19 Q. How would -- if it wasn't known</p> <p>20 which contracts would be assumed, how would</p> <p>21 one go about trying to figure out what would</p> <p>22 be the actual cure amount?</p> <p>23 MR. TAMBE: Objection to form.</p> <p>24 A. At a high level you could look at</p> <p>25 the accounts payable activity and look at --</p>	<p style="text-align: right;">Page 213</p> <p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 get some bearings as to, okay, what are the</p> <p>3 significant contracts, what do we think we</p> <p>4 need, they're mission critical to run the</p> <p>5 business. I've seen indications in some of</p> <p>6 the documents that are included as exhibits</p> <p>7 that would suggest -- one of them I recall, if</p> <p>8 I'm not mistaken, was produced in the Cox</p> <p>9 deposition and there was notes up to the side</p> <p>10 that would suggest Cox had an understanding or</p> <p>11 whoever wrote that note had an understanding</p> <p>12 that the real liability was really only \$200</p> <p>13 million. Not 1.5 billion or 2.25 billion.</p> <p>14 Q. But other than your kind of</p> <p>15 interpretation of the litigation materials</p> <p>16 that you referenced as part of this</p> <p>17 litigation, do you have any knowledge as to</p> <p>18 how that figure was calculated?</p> <p>19 MR. TAMBE: Objection to the form</p> <p>20 of the question.</p> <p>21 A. At the time?</p> <p>22 Q. Did you at the time?</p> <p>23 A. Well, certainly not at the time.</p> <p>24 Q. Do you now have any knowledge</p> <p>25 other than your reading of litigation</p>

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2 materials?

3 MR. TAMBE: Object to form.

4 Q. Or being advised by Jones Day.

5 A. I don't think there's any evidence  
6 in the record to suggest that a good faith  
7 effort to derive that number prior to closing.  
8 Or to support that number prior to closing of  
9 the deal.

10 Q. You're characterizing your view of  
11 kind of the record. My question is just a  
12 little bit different. I just want to make  
13 sure I understand whether you have any  
14 information other than your characterizing the  
15 litigation record about how that was  
16 calculated. I mean, have you talked to people  
17 that are involved? Did you go back and look  
18 at documents and so forth?

19 A. It's hard for me to parse that  
20 because my current understanding is based on  
21 the litigation record. I don't have an  
22 independent understanding apart from, you  
23 know, the work I've been doing in support of  
24 this matter.

25 Q. Okay. So I just want to make sure

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2 for preparation -- for discussion of this  
3 topic you didn't go back and talk to people or  
4 look at documents other than the litigation  
5 materials.

6 A. No. I looked at the documents we  
7 discussed this morning. I think that's --  
8 we've covered that.

9 (Deposition Exhibit 470A, document  
10 bearing production numbers  
11 LBHI\_SEC07940\_927774 through  
12 LBHI\_SEC07940\_927779, marked for  
13 identification as of this date.)

14 BY MR. THOMAS:

15 Q. Was Alvarez aware prior to the  
16 closing that there were transaction  
17 adjustments made to the cure and comp figures?

18 MR. GATTO: Object to the form.

19 A. Was Alvarez aware there were  
20 transaction adjustments made to the comp and  
21 cure. I think what you're going to show me is  
22 a balance sheet that has the transaction  
23 adjustment on it that might have been copied  
24 to A&M at some point in time. I don't think  
25 anybody had an understanding of that or put a

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2 focus on that at the time.

3 Q. Well, let me see if this is what  
4 you think I was going to show you. It's  
5 Exhibit 470A. Have you seen this document  
6 before?

7 A. I believe I have.

8 Q. Is this the document that you were  
9 referring to?

10 A. What I was fixated on was the  
11 balance sheet so I have to look at this and  
12 see if it jogs my memory. There were -- it  
13 was characterized as transaction adjustments  
14 in the document that I was thinking of.

15 (Document review.)

16 A. It's not the exact document but  
17 it's probably not dissimilar to the one I was  
18 thinking about.

19 Q. Okay. Let me -- this is a  
20 document from Martin Kelly at Lehman. And  
21 it's sent to, among others, David Coles at  
22 Alvarez and John Suckow.

23 A. Suckow.

24 Q. Suckow. And James Fogarty.

25 They're all at Alvarez; is that right?

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2 A. Well, Dan Fogarty is no longer at  
3 Alvarez. I think you're aware of that.

4 Q. And this is sent very early in the  
5 morning it appears, late on September 19th,  
6 2008, 1:12 a.m. So it's really more like  
7 very, very late on the 18th. And the lower  
8 e-mail from David Coles to Kristy Wong at  
9 Lehman. It says, "Kristy, some colleagues and  
10 I have met on Tuesday and discussed the  
11 consolidated balance sheet and the likely post  
12 Bar Cap sale -- " it says BS.

13 A. Balance sheet.

14 Q. Oh, balance sheet. Okay. Sorry.  
15 Not an accountant.

16 "Martin suggested we could get  
17 some information from you. Do you have a  
18 current consolidating BS file by entity that  
19 you could send or grant us access?"

20 Now, I had thought you had said  
21 that Alvarez prior to closing was really not  
22 doing any work relating to the sales  
23 transaction. Can you describe to me what's  
24 going on here?

25 A. Yes. We were trying to understand



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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 what the entry was going to look like post</p> <p>3 sale. What's the domain of assets and</p> <p>4 liabilities we need to deal with. I think</p> <p>5 that's exactly what they're asking about here.</p> <p>6 They want a balance sheet that depicts the</p> <p>7 entity and then the deal gets done.</p> <p>8 Q. So as part of that they wanted to</p> <p>9 know what assets and liabilities were being</p> <p>10 transferred as part of the sale transaction,</p> <p>11 correct?</p> <p>12 A. You could probably say that by</p> <p>13 inference but I think the focus on our part</p> <p>14 would have been what are we going to be</p> <p>15 responsible for managing.</p> <p>16 Q. Do you know -- have you seen the</p> <p>17 spreadsheet that's attached before?</p> <p>18 A. I believe I have. Again, I have a</p> <p>19 recollection of seeing this.</p> <p>20 Q. And you see that there's a</p> <p>21 Transaction Adjustments column on the</p> <p>22 right-hand side?</p> <p>23 A. Yes.</p> <p>24 Q. And then if you go a couple more</p> <p>25 pages to the Bates ending in 778 you'll see</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 under Payables there's transaction adjustments</p> <p>3 for the bonus payable and a cure payments</p> <p>4 accounts payable.</p> <p>5 Do you see that?</p> <p>6 A. I'm not there yet. I'm sorry.</p> <p>7 Q. The page ending Bates number 778.</p> <p>8 A. Yes.</p> <p>9 Q. Under Payables.</p> <p>10 A. Yes.</p> <p>11 Q. Do you see where there's</p> <p>12 transaction adjustments for the bonus payable</p> <p>13 and cure payments/accounts payable?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know if Alvarez was</p> <p>16 concerned about the fact that there were</p> <p>17 transaction adjustments to this amount?</p> <p>18 A. No. Again, I think our focus was</p> <p>19 not on the transaction or -- itself. It was</p> <p>20 on help us understand the assets and</p> <p>21 liabilities we need to be focused on as we</p> <p>22 begin to administer the wind-down of this</p> <p>23 estate.</p> <p>24 Q. It's fair to say at least Alvarez</p> <p>25 was aware of the fact that there was</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 transaction adjustments to these items.</p> <p>3 MR. TAMBE: Objection to the form.</p> <p>4 A. I could not say one way or the</p> <p>5 other whether anybody focused on that. I</p> <p>6 don't think -- if I were them at the time and</p> <p>7 what I would have been thinking about I would</p> <p>8 not have focused on it.</p> <p>9 Q. Did you talk to these people to</p> <p>10 see if they focused on it? These people being</p> <p>11 the ones that received this at Alvarez.</p> <p>12 A. I've spoken to John Suckow so I</p> <p>13 know that John would not have been thinking</p> <p>14 about this at the time. Jim Fogarty you're</p> <p>15 going to get him in a couple of weeks.</p> <p>16 Q. Did you ask Mr. Suckow about comp</p> <p>17 and cure and --</p> <p>18 A. I did not ask him specifically</p> <p>19 about this document. But I'm reasonably</p> <p>20 certain given significant interaction with</p> <p>21 John that he would not have been focused on</p> <p>22 this at the time.</p> <p>23 Q. What was your -- why did you call</p> <p>24 John?</p> <p>25 MR. TAMBE: Objection to the form</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 Q. For purposes of this deposition?</p> <p>4 I think you said you called --</p> <p>5 MR. TAMBE: Object to the form.</p> <p>6 He interacts with John almost on a daily</p> <p>7 basis.</p> <p>8 MR. THOMAS: I think the testimony</p> <p>9 was he called him for purposes of</p> <p>10 deposition.</p> <p>11 MR. TAMBE: I'm not sure that's</p> <p>12 what he said so why don't you --</p> <p>13 MR. THOMAS: Yeah.</p> <p>14 A. I reached out to John initially in</p> <p>15 the context of I think what you're asking when</p> <p>16 I was shown the October 8th, 2008 Unsecured</p> <p>17 Creditors Committee presentation because I had</p> <p>18 never focused on the slide that you questioned</p> <p>19 me about earlier. And, as I said, most of the</p> <p>20 A&amp;M team was in and out throughout that</p> <p>21 process. And I wasn't present at the time</p> <p>22 this was discussed. John was there the entire</p> <p>23 time. So I asked John, Do you have any</p> <p>24 recollection of how this was talked about.</p> <p>25 You know, what concerns might have been there</p>

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2 at the time. And John didn't even remember  
3 the slide. It wasn't -- it just didn't  
4 register with him.

5 Q. Another question. This says cure  
6 payments/accounts payable. Do you know if the  
7 cure amount was more than just cure but was  
8 also trade payments? There seems to be two  
9 columns there.

10 MR. TAMBE: Object to the form.

11 A. I really don't know what was being  
12 attempted to be characterized here. If  
13 they're trying to draw a distinction between  
14 cure and accounts payable. To me cure equals  
15 accounts payable you're assuming but I don't  
16 know what they meant when they wrote this.

17 Q. But there are two different  
18 entries here, that are added together. I take  
19 that back. They may not be --

20 MR. TAMBE: If you go back and  
21 look at the column headings --

22 A. No, there's two different dates.  
23 8/31/08 and 9/17/08.

24 Q. Oh, I see. And do you know why  
25 that change was made, the transaction

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2 adjustment was made?

3 A. Not specifically, no.

4 Q. Okay. Let me go back to a  
5 question about the value of Lehman's long  
6 positions the week of September 15th. If -- I  
7 think there's some testimony that, you know,  
8 the markets were at about 75 billion give or  
9 take on the preceding weekend before the  
10 bankruptcy on September 12th. If they were  
11 updated at all on Monday, what kind of record  
12 does that updating process create? Are there  
13 computer records that we could go look at and  
14 see if somebody entered new amounts that were  
15 different from Friday? Are there paper  
16 records generated?

17 A. I believe you'd likely go to the  
18 GSF system and see for a given CUSIP what  
19 changed if anything on a day-to-day basis.

20 Q. So that system would tell you for  
21 a given CUSIP if something was changed on  
22 Monday and if it was changed on Tuesday and so  
23 forth?

24 A. By inference. It's going to give  
25 you the mark at that time I believe, if I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 understand correctly, on a day-to-day basis.  
3 CUSIPs are in and out of their portfolio. You  
4 can't necessarily be assured that the same  
5 CUSIP's going to be there on Friday -- or on  
6 Monday that was there the previous Friday.  
7 But as a general rule there is probably a  
8 process you can go through there.

9 Q. To your knowledge has anyone done  
10 that?

11 A. I mentioned the GFS system as one  
12 of the sources that I had in mind when I was  
13 drawing my understanding that the marks were  
14 changing day-to-day. That's my best  
15 recollection at the time. I would just refer  
16 you to my prior testimony on that.

17 Q. Let me be a little more specific.  
18 Did you go sit down at the GF system and look  
19 at a whole bunch of CUSIPs and see what the  
20 value was on Friday versus Monday versus  
21 Tuesday?

22 MR. TAMBE: Objection to form.

23 A. I believe that members of the team  
24 have been involved in that, yes.

25 Q. Members of what?

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2 A. People that are working on the  
3 forensic team for Alvarez.

4 Q. Is that the ongoing litigation  
5 work?

6 A. Yes.

7 Q. Was it done prior to that  
8 litigation work, to your knowledge, by anyone?

9 A. Not to my knowledge.

10 Q. And the records are still there?

11 I mean, they still have those -- they have  
12 entries for those dates?

13 A. I believe so, yes.

14 Q. Does it show -- is there a record  
15 of when changes were made? For example, you  
16 have a mark of, let's say, a hundred on one  
17 day and the next day it's 95 and the next day  
18 it's 90. In addition to showing the marks on  
19 different days, will it show you when changes  
20 were made inputted?

21 A. I don't know.

22 MR. THOMAS: And I guess you're  
23 not going to let me ask about the  
24 results of the analysis --

25 MR. TAMBE: No. I mean, I just

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 found the question curious because you 3 guys have the GFS system, we don't. We 4 have to ask you for data about GFS 5 system. And we did in discovery. 6 That's how we got it. So you know more 7 about it than we do. 8 MR. THOMAS: I will confess I 9 don't know anything so I'm going to 10 just -- 11 MR. TAMBE: I wasn't sure if you 12 knew about it when you were asking the 13 questions anyway but we don't have 14 access -- 15 MR. THOMAS: I know it exists but 16 these little technical details maybe 17 we -- 18 MR. TAMBE: No, we don't have 19 access to it. So we can't just go into 20 GFS and make queries. We have to ask 21 you, Barclays, to give us data that we 22 can then review so... 23 MR. THOMAS: Yeah. 24 BY MR. THOMAS: 25 Q. Are there any other records</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 generated by the marking process? 3 A. I don't know. I don't have 4 perhaps extensive understanding of the 5 intricacies of the system that you're looking 6 for. I do think there's much better resources 7 for you to find out under Barclays' roof right 8 now. 9 MR. THOMAS: Why don't we go ahead 10 and take a short break and see how much 11 more I have left. 12 THE VIDEOGRAPHER: The time is 13 3:30. We are going off the record. 14 (Recess taken.) 15 THE VIDEOGRAPHER: The time is 16 3:41. We are back on the record. 17 BY MR. THOMAS: 18 Q. Mr. Kruse, I'd just like to walk 19 through some of the deposition topics if you 20 want to pull that -- Exhibits 1 and/or 2 out. 21 I think they're pretty identical. 22 A. I think you mean 457A and 458A. 23 Q. Oh, yeah. That's true. You're 24 ahead of me. Excuse me. 25 In looking at topic 2 in terms</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 of -- excuse me. Topic 3. In terms of when 3 you understood that Barclays acquired -- was 4 acquiring the repo collateral, the clearance 5 box assets, the 15(c)3 assets and the 6 exchange-traded derivatives, and the margin, 7 with respect to you, Alvarez, and we can go 8 back through these exhibits if you want, but 9 certainly as of the e-mail description of the 10 deal by Weil the week after the deal, it's 11 fair to say that Alvarez was aware of these 12 things. 13 MR. ROTHMAN: Objection to form. 14 A. Well, I can't attest to how much 15 we would have focused on all the details of 16 that Weil attachment. I think -- I tried to 17 describe our focus for what it was. It was 18 really on what's ours and what do we need to 19 be concerned about from an estate 20 administration standpoint. 21 Q. But putting aside whether that was 22 really your focus at the time, it was 23 information that you had that was provided to 24 you by Weil? 25 A. Yes.</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL 2 Q. I mean, that was your 3 understanding. The topic is just when Alvarez 4 understood that Barclays acquired the repo 5 collateral, the clearance box assets, the 6 15(c)3 assets, the exchange-traded derivative 7 and the margin. If it wasn't -- it was 8 roughly in that time at least within a week or 9 so after closing. That fair enough? 10 MR. TAMBE: Objection to form. 11 MR. ROTHMAN: Join. 12 Q. I can give you a date if you want. 13 For example, the September 27th e-mail from 14 Weil to a number of people at Alvarez 15 describing the purchase assets. Roughly in 16 that time period that Alvarez -- certainly by 17 that time period Alvarez would have been aware 18 of -- that Barclays was acquiring those 19 assets, correct? 20 MR. TAMBE: Objection to form. 21 A. Generally, yes. 22 Q. And now putting on your LBHI hat, 23 is it your understanding that Weil who drafted 24 the deal documents, was obviously LBHI's 25 counsel, was obviously aware that Barclay was</p>

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 acquiring those assets prior to closing?  
3 MR. ROTHMAN: Objection to the  
4 form.  
5 A. Yeah. As I interpret the  
6 attachment to the e-mail you're referring to  
7 where Weil is summarizing the deal terms, I  
8 took that to mean they're summarizing, you  
9 know, the documentation to the deal, the APA,  
10 the clarification letter, et cetera, and  
11 putting their own interpretation on that.  
12 Q. So that reflected -- sorry. So  
13 that reflected Weil's understanding.  
14 A. That would be my inference, yes.  
15 Q. Now, number 4, topic 4 deals with  
16 communications to or from interested parties.  
17 When's the first time that you're aware of  
18 post-closing communications between Lehman or  
19 Alvarez and the trustee about the terms of the  
20 sale?  
21 A. I think this got covered and I  
22 recall talking about the December 15th, 2008  
23 meeting we had with Hughes Hubbard and certain  
24 other representatives. Including a person  
25 from Deloitte & Touche. That's the first

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2 liabilities that you mentioned earlier that  
3 you view as significant about the sales  
4 transaction?  
5 MR. TAMBE: Objection to the form  
6 of the question.  
7 A. As I sit here right now, I know  
8 some of the work that we were doing in  
9 connection with the sale motion order that was  
10 approved by the court on I believe December  
11 23rd of 2008, we were doing some work to  
12 understand all the facts and information laid  
13 out in that motion along with the declarations  
14 attached. So we were learning probably new  
15 things at that point about the 7 billion. I  
16 think there was a fair amount of confusion on  
17 our part what really happened and there's  
18 still some confusion, I'm not sure the record  
19 is completely clear on how and why JPM kept  
20 the 7 billion and what the basis of that was.  
21 But we were learning things in that context  
22 certainly.  
23 Q. Okay. About the 7 billion.  
24 Anything else stand out to you?  
25 MR. TAMBE: Objection to the form

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2 formal communication with the trustee that I'm  
3 aware of about the deal. There may have been  
4 others but, you know, that's -- again, we were  
5 doing our own diligence on this sale motion  
6 order at that point.  
7 Q. Are you aware of any other  
8 informal earlier communications?  
9 A. I'm not aware of any, no.  
10 Q. Is it fair to say the  
11 information -- any information that you  
12 learned about the sale transaction that was  
13 news to you after -- let's say after October  
14 had to do with the liabilities that you  
15 discussed earlier?  
16 MR. TAMBE: Objection to the form  
17 of the question.  
18 A. Sorry. I want to make sure I  
19 understand the -- can you repeat it?  
20 Q. Sure. I mean, just -- is there  
21 any material about the sale transaction that  
22 you learned after October in your view? And I  
23 think you mentioned earlier some -- you  
24 mentioned earlier something about the  
25 liabilities. Is there anything other than the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 of the question.  
3 A. Nothing that we haven't already  
4 talked about today.  
5 Q. Okay. And on the liabilities,  
6 just to bear down a little bit on what you  
7 learned that was new after October about the  
8 liability amounts.  
9 A. We talked about this. I'm not  
10 exactly clear what the distinction, the  
11 importance is of October. But -- because I  
12 think I already testified -- I believe it was  
13 toward the end of December 2008 when our  
14 finance team was finalizing the closing of the  
15 filing date books and records. Issues started  
16 to bubble up about the amount of the  
17 liabilities for comp and to some extent for  
18 cure as well.  
19 So that created some questions in  
20 our mind at that point.  
21 Q. And can you describe what those  
22 issues were precisely?  
23 A. I think the -- they're best  
24 characterized in the February 19th letter that  
25 Brian Marsal wrote, as I mentioned earlier. I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 think that really -- obviously we're asking  
3 the question to Barclays help us understand  
4 this. Here's what we see. Help us understand  
5 this. I think that speaks for itself.

6 Q. Okay. When --

7 MR. TAMBE: Todd, just before  
8 you -- just a point of clarification on  
9 that. You talked about discovering  
10 something new. I assume you're talking  
11 about --

12 MR. THOMAS: I mean, I don't want  
13 to --

14 MR. TAMBE: I'll ask the question.  
15 Fine. We can do it now or I'll ask the  
16 question when you're done examining.  
17 Although I think there's --

18 MR. THOMAS: Well, is it really a  
19 point of your clarification or are you  
20 trying to suggest something?

21 MR. TAMBE: The point of  
22 clarification is I'm assuming you're not  
23 including everything that's learned in  
24 the 2004 process that's new. That  
25 wasn't known before the 2004 process.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 know, or focused on this issue at some point  
3 prior to that, I think that's wrong. There  
4 were a lot of other priorities that we were  
5 dealing with and this just wasn't anywhere  
6 near the early priorities in that first  
7 quarter of the administration of the estate.  
8 We were gathering facts early on just to lock  
9 it down what went over, what didn't go over.  
10 We weren't in any way attempting to  
11 comprehensively evaluate the Barclays deal in  
12 the first quarter of the administration.

13 Q. So what was new was further  
14 understanding about the economics of the deal  
15 based upon your further focus on it? Or were  
16 there any new -- I mean, you knew the  
17 assets -- you knew very early on even by  
18 before the end of September Weil telling you  
19 these are the assets that were transferred  
20 over. And you knew the liabilities assumed.  
21 And you had -- obviously, you had the sales  
22 documents. And so what are the -- what  
23 material new facts did you learn about the  
24 deal after the end of September?

25 A. You mean other than everything

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2 MR. THOMAS: No, anything new.

3 MR. TAMBE: Okay. Well, then,  
4 that wasn't clear.

5 MR. THOMAS: I think it was.

6 MR. TAMBE: Okay.

7 BY MR. THOMAS:

8 Q. You understand by new I didn't  
9 mean to put a deadline on something.

10 A. I wasn't think of that obviously  
11 when I answered the question. There was  
12 clearly a lot of information we gained around  
13 all these topics in connection the 2004  
14 discovery.

15 Q. Um-hum. But, I mean, you knew  
16 much -- or you knew the assets that had been  
17 transferred. You knew the -- what did you  
18 learn that was new other than something about  
19 what's in the Marsal letter about the  
20 liabilities and about the 7 billion?

21 A. There was never a comprehensive  
22 attempt for us to fully evaluate the totality  
23 of the deal and the economics of the deal  
24 until we started a forensic focus on it in  
25 January 2009. So the idea that we knew, you

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 that's in the Rule 60(b) motion and the  
3 attachments thereto?

4 Q. Yeah. I mean facts.

5 A. There are volumes of facts that we  
6 learned in connection with that discovery.

7 Q. Okay.

8 A. Volumes of information we  
9 gathered. The idea that we somehow knew that  
10 in September is in my mind ridiculous.

11 Q. Can you identify some particular  
12 facts?

13 A. Yes. Let's get out the Rule 60(b)  
14 motion and read it.

15 Q. Okay. But I mean as you sit here,  
16 can you -- I mean, are there assets that, you  
17 know, went over that you didn't know went  
18 over?

19 A. I've tried to describe that there  
20 was not a comprehensive valuation of the deal  
21 at that -- in those early stages. I've tried  
22 to characterize as best I can the context of  
23 what we were doing and why. I hope the record  
24 is clear on that point but we were not  
25 attempting in the first quarter of the

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2 administration of the estate to do a  
3 full-blown valuation of the economics of the  
4 deal. There were things that came to our  
5 attention toward the end of that quarter that  
6 gave us cause for concern and resulted in us  
7 putting more focus on it.

8 Q. Okay. And I understand what  
9 you're saying about increased focus and not  
10 doing a full-blown economic analysis. I'm  
11 just honing in on particular specific facts.  
12 There's one thing -- it seems to me you had  
13 the facts but you didn't focus on them and do  
14 a full-blown economic analysis. Is that a  
15 fair summary of what you're saying?

16 MR. TAMBE: Objection to the form.

17 A. We had certain limited facts as a  
18 result of trying to gain an understanding  
19 early on of what went over and what didn't go  
20 over. We were not attempting to  
21 comprehensively evaluate the detail in its  
22 totality at that stage of the administration  
23 of the estate. It was not a priority. There  
24 were a lot of other things we felt were a  
25 higher priority at that state.

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2 irresponsible to put an emphasis on that  
3 versus the higher priority of getting the  
4 information in hand that we needed to minister  
5 and run the estate.

6 Q. I appreciate that. And you're  
7 stating that very strongly and it's  
8 understood. I just want to know if you didn't  
9 think there was any facts in terms of the deal  
10 in terms of what assets and liabilities were  
11 transferred that you didn't have by the end of  
12 September.

13 MR. TAMBE: Objection to the form  
14 of the question.

15 A. Yes. There were facts that we  
16 didn't have about the deal at the end of  
17 September. Certainly there were many facts we  
18 didn't have.

19 Q. What if any facts would have  
20 prevented you from doing the economic analysis  
21 that you're doing now?

22 A. I will again try to communicate  
23 the issue we were dealing with. We weren't  
24 getting information openly from Barclays.  
25 Shortly after the time that we got the

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. If it had been a priority for you  
3 and you had tried to do that analysis earlier  
4 at the time end of September, early October,  
5 are there any facts about assets and  
6 liabilities that you did not have that would  
7 have prevented you from doing that analysis?

8 MR. TAMBE: Object to the form.

9 A. There was a very difficult process  
10 we had for getting any information from  
11 Barclays. I think I referred earlier in my  
12 testimony to extraordinarily difficult  
13 circumstances in getting Barclays to execute  
14 under the TSA. That big focus that we had as  
15 it related to Barclays as an entity was  
16 getting performance of the TSA. We were at  
17 Barclays' mercy in terms of needing their  
18 employees, their systems, their information,  
19 their insight. That was the focus, the  
20 immediate most important focus for us early on  
21 in the administration of the estate. If we  
22 didn't get that right a lot of things were  
23 going to go wrong. That was the priority. We  
24 weren't focusing on the Barclays deal at that  
25 stage. It would have been in my mind

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2 information we've seen in these e-mails today  
3 where we got the CUSIP level detail of what  
4 came over, there were repeated problems in  
5 performance under the TSA. It almost resulted  
6 in a lawsuit being filed. I mean, we had  
7 it -- we had the lawsuit drafted and it was  
8 going to be served if we didn't get  
9 cooperation. That's the degree to which the  
10 performance or the lack of performance under  
11 the TSA was a concern of ours.

12 So if you're talking about facts  
13 that we knew or didn't know, there were -- the  
14 entire process was breaking down under which  
15 we needed to administer to the estate because  
16 of what we felt was the failure to perform  
17 under the TSA by Barclays. There were  
18 significant issues that just administering the  
19 estate was becoming -- in an appropriate  
20 fashion was becoming an issue.

21 To put an emphasis at that stage  
22 on looking back at a deal, again, that was not  
23 the focus at the time. It evolved to be a  
24 focus. But we weren't focusing on that in the  
25 first quarter.

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 Q. And my question is not about focus  
3 or whether you should have focused or  
4 shouldn't have focused or anything like that.  
5 It's just -- I just want to know if you -- if  
6 by the end of September you understood that  
7 assets that were transferred and the  
8 liabilities assumed and the fact that there  
9 was a delta between, you know, Lehman marks,  
10 whether they were stale or not, and the kind  
11 of agreed value of the assets for purposes of  
12 the deal, what's referred to in your documents  
13 as the discount, you understood those things,  
14 correct?  
15 MR. TAMBE: Objection to the form  
16 of the question.  
17 A. Yeah. I think we've covered the  
18 ground earlier but the characterization of a  
19 discount, I believe we were relaying  
20 information we got from Paolo Tonucci working  
21 for him at the time.  
22 Now, I'm sorry. I've lost track  
23 of your question in terms of what you  
24 specifically wanted.  
25 Q. I just wanted to make sure -- I

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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 2009.  
3 Q. Right. I just -- I'm just focused  
4 on the facts. You had the information but you  
5 felt you weren't in a position to analyze it  
6 at that time because you had other focuses.  
7 A. We had other priorities.  
8 MR. TAMBE: Objection to the form  
9 of the question.  
10 Q. Turning to topic number 10, when  
11 was to your knowledge a civic liquidation of  
12 LBI first considered or planned?  
13 A. Well, presumably if you filed the  
14 holding company, as I stated earlier, I think  
15 most people would recognize that the  
16 broker/dealer is not going to survive forever  
17 under those circumstances. So I would have to  
18 believe that there is a recognition that a  
19 civic liquidation was going to be occurring at  
20 some point relatively soon. I don't know the  
21 specifics of that. I'm just speaking as a  
22 general state of knowledge of analyzing the  
23 situation.  
24 Q. Okay. But you're not aware  
25 factually when that was, when it was

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2 don't want to get into whether it made sense  
3 to focus on this now or later. I understood  
4 your testimony. I'm just summing up the  
5 things we've gone through and it wasn't that  
6 you learned new facts -- you -- strike that.  
7 You understood that assets that  
8 were transferred as part of the deal and the  
9 liabilities assumed including the delta  
10 between what one document referred to as stale  
11 marks and the value put on those securities by  
12 the parties, I mean, you understood all that  
13 by the end of September, correct?  
14 MR. TAMBE: Objection to the form  
15 of the question.  
16 A. We had certain facts that we had  
17 gathered at that time. We had not evaluated  
18 those facts in a comprehensive fashion. So we  
19 weren't in a position -- if what you're  
20 ultimately trying to get at is were we in a  
21 position at the end of September to file a  
22 Rule 60(b) motion, no, I don't believe we  
23 were. We wouldn't have done that without  
24 appropriate legal counsel and we hadn't gone  
25 down that path until the first quarter of

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2 considered and so forth.  
3 A. No.  
4 Q. Was Alvarez involved in any  
5 discussions leading up to the presentation to  
6 the court on September 19th, 2008?  
7 A. No.  
8 Q. Was Alvarez involved in the  
9 presentation to the court concerning the  
10 December 2008 JPMC settlement approval motion?  
11 MR. TAMBE: Objection to the form.  
12 A. No. Alvarez didn't present to the  
13 court in that context. Weil presented to the  
14 court on behalf of Lehman Brothers Holdings.  
15 Q. And did the -- LBHI -- did LBHI  
16 coordinate with the trustees and the Creditors  
17 Committee in connection with that settlement  
18 motion?  
19 MR. TAMBE: Objection to the form.  
20 Use of the word "coordinate."  
21 A. Any such coordination, to the  
22 extent it happened it would probably be best  
23 addressed by Weil because I think it was  
24 happening at that level to the extent it was  
25 happening.

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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 Q. With respect to the appellate</p> <p>3 brief filed by LBHI in the district court in</p> <p>4 support of the sale agreement, and in</p> <p>5 opposition to the Bay Harbor appeal dated</p> <p>6 December 12th, 2008, as part of your</p> <p>7 preparation for your testimony here today, did</p> <p>8 you research that at all?</p> <p>9 A. Yes. I'm not aware that there was</p> <p>10 anybody at Alvarez &amp; Marsal that was aware</p> <p>11 that that was going to happen before it</p> <p>12 happened.</p> <p>13 Q. Who at LBHI coordinated or</p> <p>14 interacted with Weil about that filing?</p> <p>15 A. I don't know specifically. I</p> <p>16 would presume somebody in the in-house legal</p> <p>17 team but again I don't know specifically.</p> <p>18 Q. And Alvarez -- you say Alvarez</p> <p>19 was -- was Alvarez aware of the appeal filed</p> <p>20 by objectors?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. What is LBHI's understanding of</p> <p>23 who drafted the clarification letter?</p> <p>24 A. LBHI's current understanding is</p> <p>25 embodied in the discovery under the Rule 2004</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 discovery. And I -- you know, I know I've</p> <p>3 seen various e-mails with various drafts going</p> <p>4 back and forth. I think it was a collective</p> <p>5 process of Cleary Gottlieb, if I'm not</p> <p>6 mistaken, Weil, all -- you know, Simpson</p> <p>7 Thacher. All the counsel on behalf of the</p> <p>8 parties involved at the time.</p> <p>9 MR. THOMAS: If we could just take</p> <p>10 a two-minute break I just want to review</p> <p>11 my notes.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 4:07. We're going off the record.</p> <p>14 (Recess taken.)</p> <p>15 (Deposition Exhibit 471A,</p> <p>16 document, marked for identification as</p> <p>17 of this date.)</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 4:13. We are back on the record.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q. Mr. Kruse, let me show you a</p> <p>22 document we've marked as 471A.</p> <p>23 MR. TAMBE: What's the first page?</p> <p>24 MR. ROTHMAN: Do you want to take</p> <p>25 off the first page? It's a tab from a</p>
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<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 file.</p> <p>3 MR. KRISBERGH: That's from the</p> <p>4 appendix.</p> <p>5 MR. TAMBE: Okay.</p> <p>6 MR. THOMAS: And we had looked at</p> <p>7 some -- is that highlighting? Let me</p> <p>8 just --</p> <p>9 MR. TAMBE: It's highlighting on</p> <p>10 all of them.</p> <p>11 (Pause on the record.)</p> <p>12 MR. THOMAS: Well, let me take</p> <p>13 those back.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q. Let me just ask. Have you ever</p> <p>16 seen a copy of the final board minutes?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And do you recall -- we</p> <p>19 looked at earlier some language in there from</p> <p>20 Mr. Roberts informing the board that certain</p> <p>21 members -- certain executives at Lehman who</p> <p>22 are negotiating the deal were also negotiating</p> <p>23 employment contracts and bonuses with Barclays</p> <p>24 and planned to go over to Barclays. Do you</p> <p>25 recall looking at that earlier?</p>	<p>1 P. KRUSE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, generally.</p> <p>3 Q. And do you recall that general</p> <p>4 disclosure being also in the final board</p> <p>5 minutes?</p> <p>6 A. Yes. I have a general</p> <p>7 recollection.</p> <p>8 MR. THOMAS: Thank you. I have</p> <p>9 nothing further.</p> <p>10 THE COURT REPORTER: Are you</p> <p>11 withdrawing that exhibit?</p> <p>12 MR. THOMAS: Yes.</p> <p>13 (Continued on next page to include</p> <p>14 jurat.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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1 P. KRUSE - HIGHLY CONFIDENTIAL  
2 (Deposition Exhibit 468A  
3 previously marked for identification is  
4 withdrawn as of this date.)  
5 MR. TAMBE: We have no questions.  
6 MR. KAY: No questions.  
7 MR. ROTHMAN: No questions.  
8 MR. TAMBE: Thank you very much.  
9 THE VIDEOGRAPHER: The time is  
10 4:16. We're going off the record.  
11 (Time Noted: 4:14 p.m.)  
12  
13  
14  
15  
16  
17  
18  
19  
20 PHILIP KRUSE  
21  
22 Subscribed and sworn to before me  
23 this \_\_\_\_ day of \_\_\_\_\_, 2009.  
24  
25

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1  
2 ----- I N D E X -----  
3 WITNESS EXAMINATION BY PAGE  
4 PHILIP KRUSE MR. THOMAS 5  
5  
6  
7  
8  
9 ----- INFORMATION REQUESTS -----  
10 DIRECTIONS: NONE  
11 RULINGS: NONE  
12 TO BE FURNISHED: NONE  
13 REQUESTS: NONE  
14 MOTIONS: NONE  
15  
16  
17  
18  
19 ----- EXHIBITS -----  
20 EXHIBIT FOR ID.  
21 Exhibit 457A  
22 Barclays Capital Inc.'s  
23 Rule 30(b)(6) Deposition  
24 Notice to Lehman Brothers  
25 Holdings Inc..... 8

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1 C E R T I F I C A T E  
2 STATE OF NEW YORK )  
3 : ss.  
4  
5 COUNTY OF NEW YORK )  
6 I, FRANCIS X. FREDERICK, a Notary  
7 Public within and for the State of New  
8 York, do hereby certify:  
9 That PHILIP KRUSE, the witness  
10 whose deposition is hereinbefore set  
11 forth, was duly sworn by me and that  
12 such deposition is a true record of the  
13 testimony given by the witness.  
14 I further certify that I am not  
15 related to any of the parties to this  
16 action by blood or marriage, and that I  
17 am in no way interested in the outcome  
18 of this matter.  
19 IN WITNESS WHEREOF, I have  
20 hereunto set my hand this 17th day of  
21 December, 2009.  
22  
23  
24 FRANCIS X. FREDERICK  
25

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1  
2 ----- EXHIBITS -----  
3 EXHIBIT FOR ID.  
4 Exhibit 458A  
5 Barclays Capital Inc.'s  
6 Rule 30(b)(6) Deposition  
7 Notice to Alvarez & Marsal..... 8  
8 Exhibit 459A  
9 document bearing production  
10 numbers WGM-LEHMAN-E 00005736  
11 through WGM-LEHMAN-E 00005740..... 73  
12 Exhibit 460A  
13 document bearing production  
14 number LAZ-C-00048526..... 76  
15 Exhibit 461A  
16 document bearing production  
17 numbers AM 004503  
18 through AM 004595..... 104  
19 Exhibit 462A  
20 e-mail dated Monday, 06 October 2008., 132  
21 Exhibit 463A  
22 document bearing production  
23 numbers WGM-LEHMAN-E 00005853  
24 through WGM-LEHMAN-E 00005866..... 146  
25

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1	1
2 ----- EXHIBITS -----	2 ----- EXHIBITS -----
3 EXHIBIT FOR ID.	3 EXHIBIT FOR ID.
4 Exhibit 464A	4 Exhibit 469A
5 document bearing production	5 document bearing production
6 numbers AM 002287	6 numbers BCI-EX-00115450
7 through AM 002292..... 168	7 through BCI-EX-00115462..... 205
8 Exhibit 465A	8 Exhibit 470A
9 document bearing production	9 document bearing production
10 numbers LBHI 017667	10 numbers LBHI_SEC07940_927774
11 through LBHI 017673..... 176	11 through LBHI_SEC07940_927779..... 215
12 Exhibit 466A	12 Exhibit 471A (WITHDRAWN)
13 document bearing production	13 document..... 247
14 numbers LBHI 017761	14
15 through LBHI 017764..... 184	15
16 Exhibit 467A	16
17 document bearing production	17
18 numbers HHR_00006469	18
19 with attachment..... 192	19
20 Exhibit 468A	20
21 document bearing production	21
22 numbers AM 004734	22
23 through AM 004738..... 199	23
24	24
25	25

  

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1
2 NAME OF CASE: IN RE. LEHMAN BROTHERS
3 DATE OF DEPOSITION: DECEMBER 17, 2009
4 NAME OF WITNESS: PHILIP KRUSE
5 Reason codes:
6 1. To clarify the record.
7 2. To conform to the facts.
8 3. To correct transcription errors.
9 Page _____ Line _____ Reason _____
10 From _____ to _____
11
12 Page _____ Line _____ Reason _____
13 From _____ to _____
14
15 Page _____ Line _____ Reason _____
16 From _____ to _____
17
18 Page _____ Line _____ Reason _____
19 From _____ to _____
20
21 Page _____ Line _____ Reason _____
22 From _____ to _____
23
24
25 PHILIP KRUSE

# BCI EXHIBIT

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al.,

(Jointly Administered)

9 Debtors.  
10

-----X

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF GERARD LaROCCA

14 New York, New York

15 August 19, 2009  
16  
17  
18  
19  
20  
21  
22

23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24292

<p style="text-align: right;">Page 2</p> <p>1           HIGHLY CONFIDENTIAL - G. LaROCCA 2           August 19, 2009 3           9:30 a.m. 4 5           HIGHLY CONFIDENTIAL deposition 6           of GERARD LaROCCA, held at Jones 7           Day, LLP, 222 East 41st Street, LLP, 8           New York, New York, before Kathy S. 9           Klepfer, a Registered Professional 10          Reporter, Registered Merit Reporter, 11          Certified Realtime Reporter, Certified 12          Livenote Reporter, and Notary Public 13          of the State of New York. 14 15 16 17 18 19 20 21 22 23 24 25  TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 3</p> <p>1           HIGHLY CONFIDENTIAL - G. LaROCCA 2 3           A P P E A R A N C E S: 4           JONES DAY, LLP 5           Attorneys for Lehman Brothers, Inc. 6           222 East 41st Street 7           New York, New York 10017-6702 8           BY: ROBERT W. GAFFEY, ESQ. 9           BART GREEN, ESQ. 10 11          BOIES, SCHILLER &amp; FLEXNER, LLP 12          Attorneys for Barclays Capital 13          and the Witness 14          575 Lexington Avenue - 7th Floor 15          New York, New York 10022 16          BY: JACK G. STERN, ESQ. 17 18          QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 19          Attorneys for the Creditors Committee 20          865 Figueroa Street, 10th Floor 21          Los Angeles, California 90017 22          BY: ERICA P. TAGGART, ESQ. 23 24 25          A P P E A R A N C E S: (Cont'd.) TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 4</p> <p>1           HIGHLY CONFIDENTIAL - G. LaROCCA 2 3           JENNER &amp; BLOCK, LLP 4           Attorneys for the Examiner 5           330 N. Wabash Avenue 6           Chicago, Illinois 60611-7603 7           BY: ROBERT L. BYMAN, ESQ. 8 9           HUGHES, HUBBARD &amp; REED, LLP 10          Attorneys for the SIPA Trustee 11          1775 I Street, N.W. 12          Washington, DC 20006-2401 13          BY: JOHN F. WOOD, ESQ. 14          FARA TABATABAI, ESQ. 15 16 17          Also Present: 18          PHILIP E. KRUSE, Alvarez &amp; Marsal 19 20 21 22 23 24 25  TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 5</p> <p>1           HIGHLY CONFIDENTIAL - G. LaROCCA 2           GERARD LaROCCA, called as a 3           witness, having been duly sworn by a Notary 4           Public, was examined and testified as 5           follows: 6           EXAMINATION BY 7           MR. GAFFEY: 8           Q. Mr. LaRocca, good morning. We met 9           briefly before the deposition. I'm Bob Gaffey. 10          I'm with Jones Day and we are special counsel to 11          the estate of Lehman Brothers Holdings, Inc., 12          and as you know, we have been looking into 13          matters related to the transaction in September 14          of 2008 where Barclays purchased some assets 15          from Lehman and my questions today will be 16          largely about that. But first let me get some 17          background information. 18          Have you been deposed before? 19          A. No, I haven't. 20          Q. Okay. Could you give me an idea of 21          what your educational background is since high 22          school? 23          A. Undergraduate degree from Wagner 24          College, BS in accounting, '79 graduate. MBA 25          from Pace University, 1984, concentration in TSG Reporting - Worldwide (877) 702-9580</p>

Page 6	Page 7
<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 finance.</p> <p>3 <b>Q. And do you hold any licenses,</b></p> <p>4 <b>professional licenses of any kind?</b></p> <p>5 A. Series 7 and Series 24.</p> <p>6 <b>Q. CPA?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Did you ever practice as a public</b></p> <p>9 <b>accountant?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Do you keep your licenses current?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And give me an idea, if you would, of</b></p> <p>14 <b>your employment background. I know you're</b></p> <p>15 <b>currently employed by Barclays, but if you</b></p> <p>16 <b>could -- how long have you been with Barclays?</b></p> <p>17 A. I've been with Barclays since November</p> <p>18 of '98. Prior to joining Barclays, I spent 16</p> <p>19 years at Salomon Brothers from -- or, 15-plus</p> <p>20 years at Salomon Brothers from '83 to '98.</p> <p>21 The early part of my career from '83</p> <p>22 to '91 was primarily in the Controller's Group</p> <p>23 in the Financial Division at Salomon, and after</p> <p>24 the Treasury auction scandal in August of '91, I</p> <p>25 moved out of the controller's world and into</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 Operations and eventually was running Sali's</p> <p>3 U.S. operations.</p> <p>4 In '96 I went over to run Salomon's</p> <p>5 European operations and get the firm ready for</p> <p>6 the introduction of the euro.</p> <p>7 '9 -- back end of '97, Salomon got</p> <p>8 taken over. I hung around for a year and then</p> <p>9 joined Barclays in November of '98. So I've</p> <p>10 been out of school since '79, been on Wall</p> <p>11 Street since '79, and primarily on the back, on</p> <p>12 the infrastructure side, so all in the back</p> <p>13 office.</p> <p>14 <b>Q. You also serve or have served as a</b></p> <p>15 <b>director of the Depository Trust Corporation?</b></p> <p>16 A. I am currently on the board of the</p> <p>17 Depository Trust Company.</p> <p>18 <b>Q. How long have you been a DTC board</b></p> <p>19 <b>member?</b></p> <p>20 A. I believe this is year three.</p> <p>21 Certainly more than two. I'm not sure if it's</p> <p>22 three or four years now.</p> <p>23 <b>Q. Is that a paid position?</b></p> <p>24 A. No, it's not. DTC is a</p> <p>25 not-for-profit, industry-owned utility.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 <b>Q. And if you would, please, Mr. LaRocca,</b></p> <p>3 <b>give me a resumé of the positions that you have</b></p> <p>4 <b>held at Barclays since you joined in 1998</b></p> <p>5 <b>through today?</b></p> <p>6 A. 1998, I was hired as the Global Head</p> <p>7 of Operations and had that position from '98 to</p> <p>8 2002, 2003. I'm not exactly sure when that</p> <p>9 transferred to my responsibilities.</p> <p>10 In, I believe in 2000, in addition to</p> <p>11 my operational responsibilities, I was the Chief</p> <p>12 Financial Officer for Barclays Capital for</p> <p>13 roughly a couple years, 2000 and 2001. The CFO</p> <p>14 had resigned and they had asked me to step into</p> <p>15 that role. And those jobs were based in London.</p> <p>16 In February of 2002, I relocated back</p> <p>17 to the United States. At that point in time, I</p> <p>18 relinquished my chief financial officer role and</p> <p>19 retained the operations responsibilities</p> <p>20 probably for another six to twelve months,</p> <p>21 Global Head of Ops.</p> <p>22 In addition to running Ops. globally</p> <p>23 from New York for that period of time, I assumed</p> <p>24 the role of Chief Administrative Officer for</p> <p>25 Barclays Capital.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 <b>Q. That's in about '02?</b></p> <p>3 A. Yes, when I relocated.</p> <p>4 The chief administrative officer --</p> <p>5 the way our organization is structured is people</p> <p>6 have a regional boss and a functional boss, so I</p> <p>7 had regional oversight of most of the</p> <p>8 infrastructure groups and the primary oversight</p> <p>9 initially for Operations, because I was also the</p> <p>10 functional head, and I have retained those</p> <p>11 positions -- I'm still the chief administrative</p> <p>12 officer. I no longer have primary oversight of</p> <p>13 Operations, although, like I said, all the</p> <p>14 infrastructure groups report in to me from a</p> <p>15 regional perspective.</p> <p>16 Those are kind of what I call my</p> <p>17 business responsibilities as a result, I am also</p> <p>18 an officer of many legal entities.</p> <p>19 <b>Q. Within the BarCap?</b></p> <p>20 A. Within BarCap family of companies. So</p> <p>21 I'm the CEO of its U.S. broker-dealer. I am the</p> <p>22 branch manager for Barclays Bank, PLC, the New</p> <p>23 York branch. I sit on the board of its Mexican</p> <p>24 affiliate and am an officer on several of its</p> <p>25 companies.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1           <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       <b>Q. And, at least from time to time, have</b></p> <p>3 <b>to testify?</b></p> <p>4       A. Yeah, this is a first.</p> <p>5       <b>Q. Now, at the moment, to whom do you</b></p> <p>6 <b>report? Who is your --</b></p> <p>7       A. Rich Ricci.</p> <p>8       <b>Q. You're Rich Ricci's direct report?</b></p> <p>9       A. Correct. And have been for some time.</p> <p>10      <b>Q. For our purposes, you were reporting</b></p> <p>11 <b>directly to Rich Ricci back in September of</b></p> <p>12 <b>2008?</b></p> <p>13      A. Correct. Yes.</p> <p>14      <b>Q. And how many direct reports do you</b></p> <p>15 <b>have? That might be a hard question given these</b></p> <p>16 <b>two different regional and functional</b></p> <p>17 <b>responsibilities.</b></p> <p>18      A. Excluding administrative, secretarial</p> <p>19 support, I believe it's four direct reports, and</p> <p>20 that is -- there's a woman Theresa Fox, who is</p> <p>21 the branch manager of our Miami office; there's</p> <p>22 a woman Cristiano Pedote, who runs our Brazil</p> <p>23 office; there's gentleman Mike Montgomery, who</p> <p>24 is a BarCap employee who looks after our Homeq</p> <p>25 and Equifirst.</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       You know, they have very little to do</p> <p>3 with the investment banking activities in New</p> <p>4 York, you know.</p> <p>5       <b>Q. Uh-huh.</b></p> <p>6       A. And again, you know, I'm a senior guy</p> <p>7 and I have regional oversight of all the</p> <p>8 infrastructure groups, but, you know, I</p> <p>9 wouldn't, while they report to me locally, you</p> <p>10 know, I don't do their appraisals, I don't do</p> <p>11 their comp.</p> <p>12      <b>Q. What's sometimes called the dotted</b></p> <p>13 <b>line?</b></p> <p>14      A. Dotted line, correct. Although I put</p> <p>15 input into all of that.</p> <p>16      <b>Q. Sure.</b></p> <p>17      A. There's one thing I failed to mention</p> <p>18 in terms of talking about my background and my</p> <p>19 role and responsibilities. About a year ago I</p> <p>20 was put on the board of Barclay Card Delaware.</p> <p>21 So Barclay Card has a big UK card business and a</p> <p>22 smaller U.S.-based business, and I've been put</p> <p>23 on the board of Barclays Card Delaware.</p> <p>24      <b>Q. And let me focus you back to September</b></p> <p>25 <b>of 2008. You were reporting to Mr. Ricci at</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>that point. Who were your direct reports in</b></p> <p>3 <b>September of 2008? Was it any different from</b></p> <p>4 <b>what you have just described?</b></p> <p>5       A. No.</p> <p>6       <b>Q. Now, you are familiar, obviously, with</b></p> <p>7 <b>the topic that brought us here today, the Asset</b></p> <p>8 <b>Purchase Agreement between Lehman and Barclays?</b></p> <p>9       A. Well, I know why you're here, and my</p> <p>10 familiarity with the Asset Purchase Agreement,</p> <p>11 you know, I guess we're going to talk about it,</p> <p>12 because I wasn't part of the deal team, but</p> <p>13 obviously privy to a lot of information at that</p> <p>14 time and involved in elements of kind of what</p> <p>15 went on at that point in time.</p> <p>16      <b>Q. Okay. We'll explore that during the</b></p> <p>17 <b>day.</b></p> <p>18      A. I'm sure.</p> <p>19      <b>Q. If you would, if you could frame it</b></p> <p>20 <b>out for me, give me a general description of</b></p> <p>21 <b>what your activities or involvement were with</b></p> <p>22 <b>respect to the negotiation and conclusion of the</b></p> <p>23 <b>deal in that period in call it, you know,</b></p> <p>24 <b>September 12 through the closing on the 22nd.</b></p> <p>25      <b>You can keep that calendar with you</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>all day.</b></p> <p>3       A. My first involvement or the first time</p> <p>4 I became aware of this transaction or a possible</p> <p>5 acquisition of Lehman Brothers would have been</p> <p>6 on late afternoon of September 11. I would have</p> <p>7 gotten a call from Rich Ricci, who indicated</p> <p>8 that Barclays was thinking about acquiring</p> <p>9 Lehman Brothers and that he was on his way to</p> <p>10 New York with Bob.</p> <p>11       He had given me a phone number of a</p> <p>12 gentleman named Mark Fisher at Lehman Brothers.</p> <p>13       MR. STERN: Shafir?</p> <p>14       THE WITNESS: Mark Shafir. I'm sorry.</p> <p>15       Mark Shafir.</p> <p>16       And said, call him up, find out what</p> <p>17 you can and, you know, he was going to</p> <p>18 arrive in New York at 3 A.M. and wanted to</p> <p>19 meet at 3 A.M.</p> <p>20      <b>Q. The "he" you're referring to is Bob is</b></p> <p>21 <b>going to arrive at 3 or Shafir?</b></p> <p>22      A. My conversation was with Rich. I</p> <p>23 was -- but Rich left me the impression -- I was</p> <p>24 left with the impression that Bob was with him.</p> <p>25      <b>Q. And the Bob you're referring to is Bob</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **Diamond?**  
3 A. Correct.  
4 **Q. So what happened next?**  
5 A. I called -- this was late afternoon,  
6 roughly 3 o'clock, and I called Mark Shafir and  
7 asked for access to the data room and, believe  
8 or not, we didn't get access until much later  
9 that night because Mark required us to execute  
10 an NDA, non-disclosure agreement, and that took  
11 a long -- longer than I thought.  
12 So around 9, 10 o'clock at night --  
13 so, that afternoon of the 11th, gotten a  
14 heads-up from Rich, initiated a dialogue with  
15 Mark Shafir, and began to mobilize a due  
16 diligence team, letting them know that at some  
17 point in time in the evening that we were going  
18 to have access to a data room and that we needed  
19 to be prepared to work through the night  
20 because, you know, we were expecting visitors  
21 from the UK, Rich and Bob, and needed to be able  
22 to have information to share with them at that  
23 point in time.  
24 Now, what I would have done would have  
25 mobilized primarily infrastructure people,  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **based on what you remember?**  
3 A. Bill Lista would have been the real  
4 estate person.  
5 **Q. And the IT guy?**  
6 A. Rich Greenbaum.  
7 **Q. That's the former Lehman person?**  
8 A. Correct.  
9 **Q. And who was HR?**  
10 A. I think it would have been Mark Kerman  
11 or Michael Evans, one of those two individuals.  
12 **Q. And the internal audit?**  
13 A. Bob Hart.  
14 **Q. And compliance?**  
15 A. Erin Mansfield.  
16 **Q. Say it again, please?**  
17 A. Erin, E-R-I-N, Mansfield.  
18 **Q. And there may have been a couple of**  
19 **other categories?**  
20 A. Yeah, there may have been a couple  
21 other categories, you know, may have been  
22 additional people.  
23 **Q. Sure.**  
24 A. To the best of my recollection, those  
25 would typically be people that I would have, you  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 because that's my role as more of a -- more of a  
3 back-office oriented than a front office  
4 orientation, and would have reached out to the  
5 guy that runs our internal real estate and said,  
6 you know, you got to look at leases; and would  
7 have reached out to our technology person and  
8 said that -- he was a former Lehman Brothers --  
9 you know, we need to understand their technology  
10 infrastructure; would have reached out to  
11 someone in HR and said, you know, we want a  
12 snapshot of the demographics, compensation, how  
13 many of these do they have, what's their  
14 geographical, you know, would have -- would have  
15 encouraged them to think about what information  
16 that they would need to retrieve from the data  
17 room in a potential acquisition; would have  
18 alerted our internal audit, we're going to want  
19 to look at internal audit reports; would have  
20 alerted our compliance head.  
21 You know, it sounds like -- it's  
22 probably about ten people in major back office  
23 disciplines that I would have alerted that, you  
24 know, that they weren't going to go home.  
25 **Q. Okay. Who was the real estate guy,**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 know, would reach out to and engage.  
3 **Q. So these folks and whatever teams they**  
4 **assembled in those area gather in the data room?**  
5 A. Correct.  
6 **Q. What happens --**  
7 A. I'm not sure they gathered in the data  
8 room. We had -- the plan was to get access to  
9 the data room, right?  
10 **Q. Uh-huh.**  
11 A. And that was a -- that was --  
12 actually, what they were going to do was give us  
13 a window into the data room.  
14 **Q. Okay.**  
15 A. And for whatever reason, that was a  
16 disaster, right? You know, all our employees  
17 had accessing -- had difficulty accessing, you  
18 know.  
19 **Q. Getting onto the site?**  
20 A. Getting onto the site, accessing data  
21 that we believed we needed. You would have --  
22 well, I would have thought that a company that  
23 was out shopping itself would have been better  
24 prepared to share with a possible acquirer a lot  
25 of information, and that was anything but the  
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1           HIGHLY CONFIDENTIAL - G. LaROCCA  
2 case.  
3           And because, you know, there was an  
4 expectation on the part of senior management  
5 that we would have information in the morning  
6 when the people from the UK arrived, the calvary  
7 arrived from the UK, we ended up, a subset of us  
8 ended up going over to the law firm's offices  
9 that were representing Lehman to try to get  
10 access to data in the room.  
11           So it was a, you know, what we had was  
12 a subset of infrastructure people at Barclays  
13 Capital trying to get on the site in an  
14 automated way and others who went over and  
15 started meeting with Lehman people to try to get  
16 data.  
17           **Q. Okay. The law firm was Simpson**  
18 **Thacher?**  
19           A. Could have been. I don't recall.  
20           **Q. All right. So --**  
21           A. That was my -- so the nature of my  
22 involvement the early part of, you know, the  
23 12th and 13th was really a due diligence kind of  
24 role and more of a -- more of a coordination, in  
25 a coordination capacity.  
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1           HIGHLY CONFIDENTIAL - G. LaROCCA  
2 interface would have been Rich because I think  
3 they were focused on, again, they were focused  
4 on meeting Lehman people and doing a deal and  
5 I'm doing infrastructure due diligence. And it  
6 had, you know, in terms of relative importance  
7 to what they were doing, it was kind of a  
8 necessary --  
9           **Q. Sort of an adjunct?**  
10           A. An adjunct, but kind of not high on  
11 their priority list, right? And the -- if I  
12 could think about where I spent most of my time,  
13 I think about due diligence, right, or, you  
14 know, which group did I spend a lot of time  
15 with, it would have been with the real estate  
16 guys, trying to understand kind of what real  
17 estate Lehman Brothers owned, what were the, you  
18 know, what their lease arrangements looked like,  
19 what they owned, leased, et cetera, and would  
20 have -- and would have been Rich's kind of -- I  
21 can't think of a better word -- gofer. He  
22 wanted me around if he needed something to, you  
23 know, go get Jonathan Hughes, go get --  
24           **Q. I'm going to go with the air traffic**  
25 **controller.**  
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1           HIGHLY CONFIDENTIAL - G. LaROCCA  
2           I often describe my job as kind of  
3 like an air traffic controller, you know, where  
4 I'll get a request and then figure out who in  
5 our organization are the right resources to, you  
6 know, who's got the technical competence and,  
7 you know.  
8           **Q. Okay. So there's a point now where**  
9 **Rich Ricci and Bob Diamond arrive, right?**  
10           A. Correct.  
11           **Q. Describe that to me.**  
12           A. They would have arrived early A.M.  
13 Friday morning. I want to say early A.M., could  
14 have been 3 or 4 o'clock in the morning. Didn't  
15 have -- you know, I would have spent a little  
16 time with Rich, told him what I was doing and  
17 would have gotten, yeah, continue what you're  
18 doing, we're going to need that data at some  
19 point in time.  
20           But still very, very early days, we  
21 had difficulty in terms of, like I said, getting  
22 access to data, right? And didn't really spend  
23 a great deal of time with Rich and/or Bob at  
24 that point in time. I'm not sure if I spent any  
25 time with Bob at that time. My primary  
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1           HIGHLY CONFIDENTIAL - G. LaROCCA  
2           A. Air traffic controller, okay?  
3           And that would have been -- that would  
4 have been the nature of my involvement probably  
5 from, you know, initial call I got on the 11th  
6 through the 14th.  
7           **Q. That would take you into the Sunday?**  
8           A. That would take me into the Sunday.  
9           **Q. Now, there comes a point -- does there**  
10 **come a point in this phase where you are --**  
11           A. I don't think I went home at all  
12 that -- I'm pretty sure I didn't go home until  
13 Sunday night when it looked like the deal wasn't  
14 going to happen.  
15           **Q. That's sort of the next thing I want**  
16 **to ask about. How does it come to you that it**  
17 **looks like the deal is not going to happen?**  
18           A. I don't -- I'm not sure if it was Rich  
19 or Archie Cox or one of the senior members of  
20 the BarCap team who indicated that the deal was  
21 not going to happen, and the -- I was told, I  
22 don't recall by who, but I was made aware of at  
23 the time that, you know, we had this issue  
24 regarding UK shareholder approval.  
25           And so initially Barclays was going to  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       acquire all of Lehman Brothers and step into all  
3       its trades, right? But that required  
4       shareholder approval and, you know, and because  
5       we -- it would take us 30 days to get  
6       shareholder approval, it couldn't provide the  
7       necessary guarantees, that that was the reason  
8       our transaction couldn't proceed. Because I  
9       believe the government was looking for, you  
10      know, more formal guarantees at that time.  
11      **Q. The government there is the United**  
12      **States Government?**  
13      A. The United States Government. The  
14      U.S. Treasury or the Fed, one of those two  
15      agencies, right?  
16      So I left late Sunday believing that  
17      the transaction had -- the original transaction,  
18      where Barclays was going to acquire all of  
19      Lehman Brothers, was over and done with.  
20      **Q. Okay. You referred to Cox as a senior**  
21      **member of the Barclays team. Was there a deal**  
22      **team?**  
23      A. I don't know who was on the deal team,  
24      right? I would categorize, from my perspective,  
25      and I can't be certain who all the people on the  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. Okay. Now, you allowed us how the**  
3       **deal that was being talked about during that**  
4       **period was a global deal, it was for the entire**  
5       **firm, right?**  
6       A. Uh-huh.  
7       **Q. How did you learn that? Let me ask**  
8       **you, did you learn that at the time or did you**  
9       **learn that sort of after this first project**  
10      **ended?**  
11      A. I don't, you know, I don't know how I  
12      learned it. Maybe just being in the  
13      environment, you know. You know, everyone  
14      was -- it was a buzz around the place Barclays  
15      was going to acquire Lehman Brothers. I don't  
16      know if I was formally -- and I was operating  
17      under the impression, maybe rightly, maybe  
18      wrongly, that we were going to buy the whole --  
19      **Q. The whole thing?**  
20      A. -- the whole firm, right? And then  
21      advised that that deal had fallen apart.  
22      **Q. Now, in the course of that work --**  
23      A. Right.  
24      **Q. -- you had some access to data. I**  
25      **hear what you say about it wasn't the smoothest**  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       deal team, but, you know, it seemed like Rich  
3       Ricci was deputized by Bob and Michael Klein  
4       was, you know, his advisor. I'm sure there were  
5       other people involved, you know, but Archie  
6       being one of them, Tom Kalaris being another one  
7       who was I think looking at the wealth business  
8       at the time.  
9       But, you know, I don't really know  
10      exactly what roles they played and what entirely  
11      their area of purview was.  
12      **Q. I guess what I should, just so we can**  
13      **frame this piece out, you have alluded to it,**  
14      **but let me be clear about it on the record, are**  
15      **you involved, during this phase from, you know,**  
16      **late on the night of the 11th through the**  
17      **Sunday, in negotiations of terms with Lehman?**  
18      A. No involvement at all.  
19      **Q. Are you present with anybody is?**  
20      A. Really no involvement at all. I'm  
21      really a due diligence gofer kind of role,  
22      right, for Rich.  
23      **Q. Okay.**  
24      A. I'm an extra pair of hands, okay? And  
25      that is through Sunday night, right?  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       access to data, it wasn't as smooth as you would  
3       have liked it to have been and there was some  
4       difficulties there, but with that, did you and  
5       your due diligence team, were you able to  
6       assemble some data about Lehman and get a better  
7       understanding of the company?  
8       A. How do I answer this question? I  
9       actually really wasn't privy to a lot of the  
10      data, right? The -- I was really mobilizing  
11      resources, right? There's a group of people  
12      from the UK are traveling, right? And I was  
13      kind of like, you know, Gerard, we need to get a  
14      head start in advance, right? So, you know, so  
15      the example I gave was, you know, HR would have  
16      been a group that I reached out to, right?  
17      The -- I'm certain they got the data that they  
18      needed.  
19      **Q. Right.**  
20      A. Did that ever -- did I ever look at  
21      that data, see that data, did it ever -- no,  
22      right?  
23      **Q. So to use HR as an example, if the**  
24      **person in charge of HR --**  
25      A. Mark Kerman. I would presume he got  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 what he needed.  
3 **Q. You don't know one way or the other?**  
4 A. Don't know one way or the other. The  
5 only data that I saw was the real estate data,  
6 okay? Because I was involved with our real  
7 estate people in terms of looking at the real  
8 estate that they owned, where did Lehman have  
9 offices, et cetera.  
10 **Q. Se, again, to use the HR example, if**  
11 **someone on the HR team had developed a view or**  
12 **some knowledge about --**  
13 A. I wouldn't know.  
14 **Q. -- global bonus accruals, that's not**  
15 **something you would know?**  
16 A. I wouldn't know. Absolutely wouldn't  
17 know.  
18 **Q. All right. So you haven't slept for a**  
19 **couple of days. It's Sunday. That phase has**  
20 **ended. What happens next?**  
21 A. What I don't recall, what I don't  
22 remember is whether if I got calls Sunday night  
23 or Monday morning, you know. I mean, it was  
24 all -- when I tell you I, you know, if I got 90  
25 minutes' sleep that week, it was...  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 because, you know, JPMorgan had turned off the  
3 pipes, banks were pulling lines, counterparties  
4 were closing them out, walking away from trades.  
5 And so I was told, you know, to go over to  
6 Lehman Brothers and try to be helpful because  
7 I'm an experienced ops. guy and would have --  
8 You know, so that kind of consumed my  
9 Monday, well, that kind of -- I was heavily  
10 involved in that the whole week, and then on --  
11 that would have been a big part of my Monday.  
12 And Monday or late afternoon, I became aware  
13 that from -- and I would have become aware from  
14 Jonathan Hughes, who told me that the Fed had  
15 reached out to him and had asked him to -- and  
16 that -- so on Monday late afternoon, I believe,  
17 I believe it was Monday, Jonathan had alerted me  
18 that the Fed was financing Lehman Brothers and  
19 they were looking for Barclays to help in some  
20 kind of way.  
21 At that point in time, it really  
22 didn't resonate with me because, you know, I was  
23 fighting a lot of fires and, you know, trying to  
24 settle trades and leverage my relationships on  
25 Wall Street to try to get, you know, banks to  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 So I got a call either late Sunday  
3 night or early A.M. on Monday morning and --  
4 **Q. Just so we can have a clear record,**  
5 **when you say Sunday night, you're on Sunday**  
6 **night, the 14th?**  
7 A. The 14th or the 15th.  
8 **Q. Okay.**  
9 A. And that possible that we may buy --  
10 I'm trying to -- how I found out. Someone would  
11 have called me. I don't recall who it was  
12 called, said come back, you know, and was told  
13 we may be buying the U.S. broker-dealer, that  
14 the LBI hadn't declared bankruptcy.  
15 And when I initially found out, I'm  
16 thinking we're buying the U.S. broker-dealer. I  
17 don't know anything about an Asset Purchase  
18 Agreement and, you know, I'm thinking we're  
19 buying a U.S. broker-dealer.  
20 Now, my role is kind of changed a  
21 little bit now. Now I'm no longer in a kind of  
22 due diligence coordination role. I get sent  
23 over to Lehman Brothers and to sit with the ops.  
24 guys and told try to be helpful to them, they're  
25 dying, they're in -- they're in bad shape  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 assist and cooperate, et cetera.  
3 On the 16th, the Tuesday, Jonathan  
4 came back to me again and said, you know, the  
5 Fed wants to meet with us, they want us to -- I  
6 don't remember the exact words -- they want us  
7 to step into their trade with Lehman Brothers.  
8 It might not have been the words he used, but  
9 the tone of what he was very different than the  
10 conversation I had with him on Monday. I  
11 remember it being very different because it got  
12 my attention on the Tuesday a lot more than it  
13 got on the Monday.  
14 **Q. Can you give me a little more detail**  
15 **on that? How had his tone changed? It was more**  
16 **urgent? It was angry? It's loud?**  
17 A. It was more urgent.  
18 **Q. Okay.**  
19 A. And said we needed to get on the phone  
20 with the Fed, okay? And Jonathan used words  
21 like if the Fed is going to support this, you  
22 know, if we want the Fed to work with us and to  
23 support this transaction that we want to try to  
24 do, that we're going to have to step into  
25 that -- we're going to have to take the Fed out  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 of my -- of their financing obligation with  
3 Lehman Brothers.  
4       I participated in a phone call with  
5 the Fed on that Tuesday, and -- and you're going  
6 to ask me who it was with, and I don't recall,  
7 and after my phone call, the urgency was evident  
8 to me and I dropped what I was doing and headed  
9 down to the Fed and I met with -- now, I'm not  
10 sure if I -- I don't know if I went down on the  
11 Tuesday night. I think so, I'm almost, I'm  
12 almost positive it was Tuesday night early  
13 evening and met with Lucinda Brickler and other  
14 colleagues of hers from the Fed.  
15       And Lucinda had explained to me that  
16 the Fed was financing Lehman Brothers, had  
17 provided roughly \$45 billion in financing for  
18 Lehman Brothers, and that they were using --  
19 that Lehman was using three facilities to  
20 finance collateral and the Fed had lent them \$45  
21 billion.  
22       **Q. Do you know what the three facilities**  
23 **were?**  
24       A. If you say them, I'll -- one was Open  
25 Market Operations, one is --  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 period, would be able to put that collateral out  
3 on the street.  
4       So worked with Lucinda that night, and  
5 the Fed replacement transaction was kind of  
6 developed. Told her that she was looking --  
7 they were anxious, right? Were hoping that we  
8 could execute on Wednesday. We told them that  
9 we wouldn't be prepared. We didn't have any  
10 idea, you know, while we drew this up on the  
11 blackboard, you know, I needed to go back and  
12 figure out how it was going to work.  
13       **Q. Right.**  
14       A. And there was just so much uncertainty  
15 about data, you know, didn't know the collateral  
16 that the Fed was holding and, you know, needed  
17 to talk to our ops. people. And, you know, so  
18 Wednesday would have been a day of preparation  
19 in anticipation of beginning doing this  
20 transaction on that Thursday.  
21       **Q. So this Wednesday, the 17th --**  
22 **I'm putting the days in so we have a**  
23 **record by number as well.**  
24       A. Yeah. Yeah.  
25       **Q. So you leave the Fed, you told them**  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. OMO?**  
3       A. OMO. There was --  
4       **Q. TLSF, yes?**  
5       A. Treasury -- TLSF sounds right. And  
6 what's the third one?  
7       **Q. PDCF?**  
8       A. PDCF. Those would be the three,  
9 right?  
10       And they had explained that Lehman had  
11 put collateral into those three facilities and  
12 the Fed had advanced them \$45 billion, right?  
13 And they wanted -- they didn't have -- the Fed  
14 did not have a problem that if Barclays stepped  
15 into that trade, that we could use the  
16 facilities because it would take us -- they knew  
17 it would take us time to find financing, you  
18 know, financing with third parties. It would  
19 take some weeks to find financing.  
20       So they left me with the impression  
21 they didn't have a problem -- they had a problem  
22 with Lehman being the counterparty to the Fed  
23 and were more comfortable with Barclays being  
24 the counterparty to the Fed, and them seeing a  
25 way that Barclays had, over a couple of week  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 **we'll do this, but I can't get it done today?**  
3       A. We're going to do it on Thursday,  
4 right? And they seemed to be fine with that.  
5 They were just, you know, they were expecting a  
6 Friday closing and seemed to be okay that  
7 Thursday was the day.  
8       **Q. Were you expecting a Friday closing at**  
9 **that point, too? Was that the timeline people**  
10 **were working on?**  
11       A. You know what, I was expecting a  
12 Friday closing. It became -- and I don't know  
13 why, I don't know where, you know, again, it  
14 could have been chatter in the -- in our  
15 facilities. It became, you know, from my  
16 personal experience, it became very evident that  
17 if it had to go through another weekend, this is  
18 personal experience, they were having a great  
19 deal of difficulty, Lehman Brothers, just  
20 getting through a day because they were flying  
21 blind.  
22       They had -- they didn't know the  
23 status of their trades. They hadn't reconciled  
24 the bank accounts. They hadn't reconciled their  
25 stock record in several, several days in advance  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 of when -- even before I got in there. I mean,  
3 when was the last time you reconciled your stock  
4 record, I would ask, and they would say they  
5 hadn't reconciled in weeks because JPMorgan was,  
6 you know, shutting the -- not providing any --  
7 not only did they not provide any intraday  
8 liquidity, they denied them access to the  
9 system.

10 So the quality of data was -- was  
11 horrible.

12 Q. Okay.

13 A. Absolutely horrible.

14 Q. I interrupted you. Let me put you  
15 back where we were, I think, in the timeline.  
16 You had this conversation with Lucinda. You  
17 told her what you can get done and what you  
18 can't get done on the Wednesday?

19 A. We were going to try to do it on  
20 Thursday.

21 Q. Do you leave the Fed?

22 A. Leave the Fed.

23 Q. What happens then?

24 A. Go back to the office, mobilize the  
25 team, you know, tell them that we're going to  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 try to --

3 Q. People must be really sick of seeing  
4 you show up now. You're mobilizing teams...

5 A. Mobilizing teams, right? And it's  
6 very -- you know, in theory, it's a very simple  
7 transaction, right? So the Fed is going to  
8 release collateral to Lehman Brothers, right?

9 Q. Uh-huh.

10 A. Barclays is going to wire \$45 billion  
11 in money to Lehman, and Lehman is supposed to  
12 deliver to us the collateral that it had held at  
13 the Fed, right? That was supposed to be -- that  
14 was the transaction which was agreed.

15 Q. Okay.

16 A. Okay?

17 Q. What next?

18 A. The Thursday we begin to move money  
19 and assets start coming across. We have all  
20 kinds of operational difficulties. We had  
21 difficulties getting started, difficulties  
22 coordinating with JPMorgan, and as you  
23 undoubtedly know, that the transaction that  
24 started in the middle of the afternoon didn't  
25 get completed until -- well, never really got  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 completed, but we were moving securities into --  
3 the transaction would have started sometime in  
4 early afternoon, late morning on Thursday and it  
5 didn't get -- we stopped moving securities at  
6 Friday, would have been after 12 o'clock, that  
7 the Fed had -- DTC had closed the securities  
8 wire.

9 Q. Let me clarify that a little bit  
10 because I'm not sure I understand the timing.  
11 You're into Friday. When you say 12 o'clock,  
12 are you at noon?

13 A. So noon on Thursday, right? On or  
14 around noon on Thursday. Could have been a  
15 little before, a little after we moved cash over  
16 to JPMorgan and securities started trickling  
17 across, right?

18 Q. The cash is how much? 45 billion?

19 A. Originally, the -- we moved 5 billion  
20 initially, and the securities did not move  
21 across quickly, and as a matter of fact, we  
22 actually didn't get \$5 billion worth of  
23 securities for the first \$5 billion worth of  
24 cash that moved across.

25 At that point in time, I alerted the  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Fed, and I would have called, I'm not sure if it  
3 was Lucinda Brickler or Stephanie Heller, that  
4 we had agreed a transaction, we were having a  
5 great deal of difficulty because JPMorgan was  
6 not cooperating, and they had gone onto the --  
7 they had gotten -- I was told that they were  
8 going to reach out to JPMorgan. I can't tell  
9 you what they said.

10 They came back to me, the Fed, and  
11 said that JPMorgan wanted to hold the excess  
12 collateral in margin for the transactions to  
13 satisfy, you know, their potential exposure to  
14 Lehman Brothers, and I said that's a  
15 non-starter, that's not the transaction that we  
16 had agreed on the Wednesday.

17 We had agreed a transaction with the  
18 Fed to take the Fed out of the transaction, not  
19 for Barclays to satisfy or, you know, JPMorgan's  
20 exposures to Lehman Brothers. That was a lively  
21 discussion with me and the Fed, and at that  
22 point in time, I had escalated to Rich Ricci  
23 that JPMorgan was -- I don't know the words I  
24 would have used. I don't know that --

25 Q. Something colorful?

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**HIGHLY CONFIDENTIAL - G. LaROCCA**

A. Something colorful, right? They didn't play nice in the sandbox, okay?

And, you know, and several -- now hours have passed, right? And, you know, we haven't done -- we haven't moved much cash and much securities.

**Q. Right.**

A. I'm not sure of the -- what discussion took place with the Fed, but the Fed came back and said JPMorgan indicated that they were going to cooperate.

**Q. Okay. When you say you're not sure what discussion, the discussion between the Fed and JPMorgan?**

A. Fed and JPMorgan. I'm not privy to that conversation, right? So, but the Fed came back to me and had indicated that JPMorgan was going to cooperate, right?

**Q. Okay. So what happened next?**

A. And because of the now the Fed wire and DTC, I mean, now we're past the deadline, right? And there was -- and we're wondering how we're going about to get this transaction done.

**Q. This transaction being the --**

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**HIGHLY CONFIDENTIAL - G. LaROCCA**

A. The Fed replacement transaction given the we've already asked for extensions and the 5 billion took hours and it was trickling in and the systems weren't working, right?

**Q. Who do you have to ask for extensions?**

A. The Fed, normally, in a normal course of business, okay, the dealer community would ask one of its two clearing banks, it would be Bank of New York or JPMorgan, right, to keep the securities wire open or the money wire open.

And it's done through a clearing bank, so the dealers don't talk to the Fed, right? On occasion, 30 years of experience, when the security wire or money wire is kept open for prolonged periods of time, sometimes the Fed will want to talk to the dealer or the participant who's causing the extension.

**Q. Okay.**

A. In this instance, the Fed was party to the transaction. They were, you know --

**Q. They're in it?**

A. So I don't know that we asked. They were going to keep it open to, you know, to help us.

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**HIGHLY CONFIDENTIAL - G. LaROCCA**

**Q. Got it.**

A. Right? And they -- but still concerned about how this, you know, how this was going to happen and get done on time. We talked about internally at Barclays -- who? Me, Rich Ricci -- about, you know, moving \$40 billion in one go. And, you know, it's a lot of money and that decision carried kind of great personal risk for me and also tremendous risk for Barclays, and while I was given assurances that from the Fed that JPMorgan was going to play ball or cooperate, my experience that week with them grabbing collateral, them turning the pipes off at Lehman Brothers, caused me great concern and was very concerned that we would be exposed that kind of money.

Rich kicked the decision up. I don't know exactly the conversation that he had with Bob, but what came back to me was that Bob had gotten assurances from Bill, I think it's Bill Winters from JPMorgan, that all the collateral would move across.

So we moved 40 billion in one go, I don't recall the time, late afternoon or early

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**HIGHLY CONFIDENTIAL - G. LaROCCA**

evening of Friday, and securities started to come across in glacier-like speed, just -- and I'm not sure why the systems were creaking. I'm not sure. Just it took -- you know, there was no rule book for what was happening. These aren't, you know, this is not, you know, this transaction is not getting processed like a normal transaction, you know, and securities moved till well after midnight.

And Barclays is expecting, you know, something greater than \$45 billion worth of securities or, you know, and the number we were expecting were in the neighborhood of 49 to 50 billion dollars worth of securities, assuming there were normal haircuts assign to the collateral.

MR. STERN: When you said "well after midnight," are you sure of your recollection on that?

THE WITNESS: It was after midnight. On or around midnight. "Well after" maybe is not the right, Jack --

MR. STERN: I'm sorry, I just wanted to be accurate.

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Q. It's a good point, because let's --  
3 A. It was --  
4 Q. And just so I can further clarify  
5 this, after midnight on the midnight from  
6 Thursday over to Friday?  
7 A. Correct.  
8 Q. Okay. Okay. So at some point very,  
9 very late on Thursday or early Friday?  
10 A. Right, the Fed and DTC closed the  
11 securities wire.  
12 Q. Okay.  
13 A. Because they needed to be open for  
14 business the next day. And we found ourselves  
15 short, didn't really know how short we were  
16 because, you know, we didn't really have a lot  
17 of time to -- we had no time to look at  
18 collateral, valuations. No time, right? And  
19 were relying on information that values that  
20 were being assigned by the systems, okay, that  
21 suggested that we had approximately \$42 billion  
22 worth of securities couldn't be absolutely sure,  
23 you know, because we didn't -- didn't know what  
24 we were -- what was coming across.  
25 When it became evident that we were  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Jersey and somehow they were able to keep a  
3 running total --  
4 Q. Of what's coming across?  
5 A. -- of what's come across, right? And  
6 I don't know how they did that, so I don't  
7 know --  
8 Q. Let me just press that a little bit,  
9 see if -- did anybody talk to you about the  
10 values that were -- did the values you're being  
11 informed about come from the Bank of New York  
12 valuation, because they're like holding the  
13 collateral?  
14 A. I don't really know the specifics. I  
15 would be speculating. I really --  
16 Q. I don't want you to do that.  
17 A. I really don't know. Based upon my  
18 experience, right, you know, I would think that  
19 the Bank of New York would have no difficulty  
20 assigning values to wirable securities.  
21 Q. Hold them, right?  
22 A. Treasuries and mortgage-backed,  
23 Ginnie, Fannie, Freddie, highly liquid markets  
24 because that's what they do. They're a  
25 tri-party bank and they value the securities. I  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 short, our ops. guy got on the phone with a  
3 JPMorgan guy.  
4 Q. Who is your ops. guy?  
5 A. John Rodefelf.  
6 And I would have instructed him to get  
7 some cash back, and JPMorgan at that point in  
8 time wired \$7 billion in cash. So I left Friday  
9 morning in the wee hours, you know, sometime  
10 between 1 and 3, thinking that, you know, we got  
11 roughly 49 to 50 billion in collateral, you  
12 know, and thinking that we're going to have to  
13 finish this transaction at a later date.  
14 Q. Okay. You're thinking you got 42 plus  
15 7. What happens next?  
16 Actually, can I withdraw that? I want  
17 to go back to something you just said. You said  
18 you looked at the collateral valuation, et  
19 cetera, and you were relying on values assigned  
20 by the system. Could you tell me what you meant  
21 by that?  
22 A. No. You're probably better placed  
23 talking to an Ops. guy, right? Because somehow,  
24 right, so I'm not -- I'm in 745 or 200 Park.  
25 I'm in Manhattan. Our ops. guys are in New  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 would imagine that they would have a great deal  
3 of difficulty pricing non-wirable securities.  
4 They would have no difficulty with wirable and  
5 equities, listed stocks, and it would all be all  
6 the non-investment grade, illiquid products that  
7 they would have a great deal of --  
8 Q. Like give me some examples.  
9 MR. STERN: Let him finish. You were  
10 saying illiquid products would have a great  
11 deal of?  
12 A. Difficulty pricing. Actually, not  
13 only would they have difficulty pricing, right,  
14 but the market is in major meltdown mode, right?  
15 So I know from our own books, right, you know,  
16 there's no markets, prices are moving like -- we  
17 didn't know what it was we were going to get.  
18 We were hoping we were going to get something  
19 more -- we would end up in a position that we  
20 had something more than 45 billion in cash that  
21 went across, but we couldn't be absolutely  
22 certain.  
23 We had, you know, thousands and  
24 thousands and thousands of Cusips. We didn't  
25 know if we're getting, you know, AAA-rated  
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Page 46	Page 47
<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 corporates or wallpaper. You know, so it was a 3 lot of uncertainty, a lot of risk, and -- 4 <b>Q. Okay.</b> 5 A. -- so there's a running total being 6 kept. 7 <b>Q. Yeah.</b> 8 A. Okay. That running total gets 9 communicated to me it's 42 billion, right, but 10 these guys aren't, you know, these are ops. guys 11 and they're not traders and they're not making 12 markets in the securities, right? There are 13 no -- you know, so, you know, we wanted 7 14 billion in cash. 15 They moved 7 billion in cash to our 16 account. I left, communicated to the Feds, said 17 we didn't do the transaction, all the collateral 18 didn't move across, we got what we think is 19 roughly 42 billion in collateral and 7 billion 20 in cash, and, you know, I'm -- I'm probably not 21 going home. I'm probably going to a hotel now. 22 <b>Q. You're at least getting some sleep</b> 23 <b>now, right?</b> 24 A. I don't know if I was getting -- I 25 didn't get sleep. I maybe was going for a TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 shower, because I -- I had a hotel room, but it 3 wasn't to sleep in. It was to shower and to -- 4 I really didn't sleep. It was, you know... 5 <b>Q. So what happens next?</b> 6 MR. STERN: Where are we in time? 7 <b>Q. We are in the wee hours of Friday</b> 8 <b>morning. You've been told by the ops. guys that</b> 9 <b>42 billion plus 7 billion in cash has come</b> 10 <b>across.</b> 11 A. Right. Okay. I'm pausing. I just 12 want to remember. The closing is scheduled that 13 afternoon, right? On Friday, the 19th, right? 14 And I would have explained to Rich and Michael 15 Klein kind of what happened, right? 16 So they had that information, and it 17 becomes -- I'm not sure -- I'm not sure of the 18 timing of it, if someone said anything to me or 19 if it's a function of being in the room or, you 20 know, it's becoming evident to me that the 21 securities that came across in the -- from the 22 Fed are the securities that are going to be in 23 the -- now we're doing an Asset Purchase 24 Agreement, we're not buying the broker-dealer, 25 and the securities that we're going to purchase TSG Reporting - Worldwide (877) 702-9580</p>
Page 48	Page 49
<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 are going to be the ones that have come across 3 from the Fed. So somehow that lightbulb goes 4 off on Friday, right? For me. 5 I'm trying to recall. That's very, 6 very -- I remember going to the closing. 7 MR. STERN: You said something about 8 telling Rich and Klein. 9 A. I told Ricci and Michael Klein that we 10 didn't get all our securities, we got cash, we 11 somehow have to complete the transaction, you 12 know, don't know what it is we got in the way of 13 collateral, you know, we need to get traders to 14 look in at it. I'm not sure that we got 15 collateral that was held by the Fed, I'm not 16 sure we got collateral that was held by 17 JPMorgan, I'm not sure about anything, right? 18 You know, I'm very, very concerned that, you 19 know, about what it was we had moved across. 20 <b>Q. Okay.</b> 21 A. Right? Someone explained to me, and I 22 didn't know this at the time, and I'm in a room 23 with a bunch of lawyers, that when, under repo 24 law, in a bankruptcy, right, the collateral -- 25 we're not getting -- that's not a transaction TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 that, the way we structured it, was a repo, 3 right, a reverse repo for Barclays, that, you 4 know, that's not going to unwind, that trade, 5 you know, the Fed is going to be left with cash 6 and we're going to be left with collateral and 7 we didn't know what it was we had. 8 We didn't know what it was we had, the 9 markets were tanking, the world was melting 10 down, and there was a great deal of concern 11 about what it was we -- what it was we had come 12 across, and so I would have alerted Michael that 13 we ended up with what we believed to be \$42 14 billion, or what the system said, we needed to 15 get traders to look at it, and we got \$7 billion 16 in cash. 17 <b>Q. Michael is Michael Klein?</b> 18 A. Michael Klein and Rich Ricci, okay? 19 And then I went to the, that 20 afternoon, I went to the bankruptcy proceeding, 21 you know. I was just fascinated. I hadn't 22 seen, you know, about what was transpiring in 23 the market, you know, what wasn't, you know, 24 sitting in the gallery and then -- 25 <b>Q. In the main room or up on the other</b> TSG Reporting - Worldwide (877) 702-9580</p>



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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **floor?**

3 A. The main room.

4 And someone indicated to me that -- I  
5 don't know who, it would have been -- could have  
6 been one of Barclays' lawyers or it could have  
7 been one of Barclays' employees, but someone --  
8 it became evident to me while I was sitting in  
9 the gallery that this transaction could -- they  
10 wanted to close on Friday night, so that would  
11 require Barclays to move money Friday night.

12 At that point in time, I left because  
13 I'm thinking, you know, money wire goes down at  
14 6 o'clock and our money is going to move on  
15 Monday. I'm just thinking, you know, first  
16 thing Monday, we're going to settle this  
17 transaction. What I found out being in that  
18 room is that the Fed is going to keep the  
19 systems open. They want money -- they want this  
20 trade to close that night. I got out of there  
21 because, again, I had to --

22 **Q. You're going to mobilize another team**  
23 **new, aren't you?**

24 A. I got to mobilize another team to move  
25 cash. What accounts, you know, and, you know,  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **toward a Monday closing?**

3 A. What I'm told is Monday morning we're  
4 going to complete the securities, the Fed  
5 replacement transaction.

6 **Q. Who tells you that, do you remember?**

7 A. Could have been Rich or Michael Klein  
8 or --

9 **Q. Yeah, I want to be -- I don't want to**  
10 **be unfair about my question because sometimes**  
11 **you say it's picked up in the buzz and sometimes**  
12 **you don't know.**

13 A. I don't know, okay? I don't know.

14 **Q. Okay.**

15 A. That I didn't pick up in the buzz. I  
16 don't know who told me.

17 **Q. Okay.**

18 A. But I was definitely told that we're  
19 going to complete the transaction, that we were,  
20 you know, that JPMorgan was going to sub  
21 collateral for that \$7 billion in cash.

22 **Q. So then you go home for the weekend**  
23 **and play golf for two days?**

24 A. That's exactly right, yeah.

25 **Q. What happens next?**

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 and so I didn't stay very long.

3 **Q. About what time did you leave? Is it**  
4 **still light out? Dark?**

5 A. It was still light. It was still  
6 light.

7 Went back and stood by the phone, and  
8 then it became, at some point in time, became  
9 evident that it didn't close and, you know, and  
10 then there was a discussion -- this is where now  
11 I'm really going to get vague. Then there was  
12 discussion about how do we complete, you know,  
13 what's going to happen on Monday, how do we  
14 complete the transaction.

15 I wasn't privy to that. I wasn't part  
16 of the deal team. You know, that was  
17 negotiations that I presume were done by Rich  
18 and Michael and Lehman Brothers and, you know...

19 **Q. So how are you picking up your**  
20 **information about what's -- you're not in those**  
21 **negotiations, right?**

22 A. Not in those negotiations.

23 **Q. How are you picking up your**  
24 **information that Friday evening about what's**  
25 **going to happen next? What's going to gear you**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**

2 A. I go to the closing.

3 MR. STERN: More seriously, the  
4 question on the weekend, what did you do?

5 **Q. What are you doing Saturday? What's**  
6 **going on?**

7 A. I don't remember.

8 **Q. Well, let me see if I can give you**  
9 **sort of a guide point. Does there come a point**  
10 **where you learned that the court approved the**  
11 **sale?**

12 A. Yes.

13 **Q. Okay. Now, about when does that**  
14 **happen?**

15 A. I just don't remember.

16 **Q. Okay. We know, and there's a**  
17 **transcript that we'll -- that would show that**  
18 **the court announces it's going to approve the**  
19 **sale shortly after midnight into the early**  
20 **morning of Saturday, right? Over Friday night,**  
21 **it's like 20 after midnight, and the hearing**  
22 **ends?**

23 A. It had to open -- it had to take place  
24 before the opening on Monday, I think is what I  
25 was told.

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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **Q. Okay. That makes some sense. So now**  
3       **we have the judge right after midnight on Friday**  
4       **into Saturday, the hearing ends, right? And**  
5       **then you're aiming at a before-opening close on**  
6       **Monday?**  
7       A. Correct.  
8       **Q. I'm doing this just so see if I can**  
9       **refresh your recollection about what's happened**  
10      **in these time segments, okay?**  
11      A. Don't remember.  
12      **Q. Are you busy with the deal in some**  
13      **fashion or other on Saturday or Sunday?**  
14      A. I was there that weekend because I  
15      didn't go home.  
16      **Q. Okay.**  
17      MR. STERN: "There" being Weil Gotshal  
18      or Barclays?  
19      THE WITNESS: I'm sorry?  
20      MR. STERN: Where is the "there"?  
21      **Q. Where were you?**  
22      MR. STERN: Where are you?  
23      A. At Barclays, I think at 200 Park.  
24      **Q. I'm going to show you in a couple of**  
25      **minutes, because I bet you thought this was over**  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       A. No.  
3       **Q. Okay. So tell me what you remember**  
4       **next?**  
5       A. Monday turning up at a law office, I  
6       don't remember which one, if it was Cleary or  
7       Weil Gotshal, I don't know where it was, walking  
8       into a room, not unlike this, with about more  
9       lawyers than, you know, a lot of lawyers, right?  
10      And there was a discussion all of  
11      about ten minutes about the \$7 billion where we  
12      talked about agreeing the collateral that would  
13      come across for that \$7 billion, right? And  
14      there was a -- it was a sheet of paper, to the  
15      best of my recollection, put in front of me of  
16      kind of collateral that JPMorgan wanted to give  
17      us.  
18      We said that was unacceptable because  
19      we believed the collateral to be worth -- well,  
20      I shouldn't say -- we believed the collateral to  
21      be less, worth less than the cash and we were  
22      expecting something more than \$7 billion worth  
23      of collateral because of the haircuts.  
24      And JPMorgan said, how about you -- I  
25      shouldn't say -- the lawyers for JPMorgan said  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **when you told me everything, but -- I'm kidding.**  
3       A. You know, I --  
4       **Q. This is very helpful.**  
5       A. And then, and then Monday morning --  
6       **Q. Can I go back to the weekend for a**  
7       **second? I'm going to show you in a couple of**  
8       **minutes a clarification letter that you**  
9       **signed --**  
10      A. Okay.  
11      **Q. -- that's being -- and maybe you're**  
12      **not the one, but that's being negotiated during**  
13      **that period. Does that refresh your**  
14      **recollection about what topics you were**  
15      **addressing over the weekend?**  
16      A. I'm a signator on every legal entity  
17      for Barclays. I think I alluded to that in my  
18      background, right? So I probably signed, you  
19      know, so many documents that weekend, you know.  
20      **Q. Are you involved over the weekend on**  
21      **the Friday or the Saturday or the Sunday in any**  
22      **back and forth about what this clarification**  
23      **letter will contain?**  
24      A. No.  
25      **Q. Okay.**  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       how about you just keep the cash, and we said  
3       okay because we wanted to facilitate the close.  
4       I would have said okay. I actually got  
5       criticized for that decision because I should  
6       have got \$7 billion worth of the securities plus  
7       the margin, something greater, right?  
8       And then the deal team was going to go  
9       away and make the amendments to reflect that  
10      that Fed, you know, that the transaction had to  
11      change or the asset purchase or whatever had to  
12      change for now because we weren't going to  
13      complete the transaction.  
14      I hung around at the law offices and  
15      executed documents and then I went home and got  
16      much needed sleep.  
17      **Q. Okay. Now --**  
18      MR. STERN: I think at some point  
19      before 11 we should take a little short  
20      break, whenever it's a convenient time.  
21      MR. GAFFEY: Two or three questions  
22      and that's a very good breaking point.  
23      **Q. Now, I just want to go back to the**  
24      **documents you executed. Do you know what you --**  
25      A. I don't remember.  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **Q. Did you know at the time, or is it a**  
3       **lot of papers flying around?**  
4       A. I presumed it was the deal closing  
5       documents, you know, and --  
6       **Q. Okay.**  
7       MR. GAFFEY: Let's take a break now,  
8       okay?  
9       MR. STERN: Yes.  
10       (Recess; Time Noted: 10:44 A.M.)  
11       (Time Noted: 10:53 A.M.)  
12       BY MR. GAFFEY:  
13       **Q. Mr. LaRocca, I want to go back to --**  
14       **I'm going to go back over quite a bit of what**  
15       **you told me, but I would like to go back for a**  
16       **moment to, you said that on the Friday the**  
17       **decision was there should you take the cash, and**  
18       **you said --**  
19       A. No, Monday morning.  
20       **Q. I beg your pardon, Monday morning.**  
21       **And you said okay and you were criticized for**  
22       **that. Who criticized you for that?**  
23       A. A colleague of mine, a gentleman Mike  
24       Keegan, indicated to me that, you know, you  
25       should have got securities plus the margin so,  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **the quality of the securities that came over?**  
3       A. No one -- no one would have expressed  
4       concern to me, but I don't think anyone had time  
5       to look, right? You know.  
6       **Q. So how is Keegan in this conversation?**  
7       **I'm trying to get a sense of it. This sounds**  
8       **like anything that would range from he's --**  
9       A. Mike is -- not certain of Mike's role  
10       on the deal, right? My impression of Mike's  
11       role on the deal is he would have some  
12       responsibility for figuring out what it is we  
13       got in the way of collateral, right? So he's  
14       ultimately going to be responsible for managing  
15       a subset or a piece of assets that have come  
16       across. So that would be his role.  
17       **Q. And did Mike express any view about**  
18       **any of the assets that came over, good assets,**  
19       **bad assets?**  
20       A. No.  
21       **Q. Do you know if by the Monday anybody**  
22       **had looked to see whether -- to make any**  
23       **determination about the quality of the assets**  
24       **that came over, quality of the securities that**  
25       **came over?**  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       theoretically, we could have gotten some more  
3       value.  
4       **Q. And what's Keegan's job?**  
5       A. He's a trader -- well, he manages a  
6       trading unit of -- manages a trading -- manages  
7       a trading unit of credit assets, right? So an  
8       illiquid trading book.  
9       **Q. Tell me, just so I can frame this,**  
10       **tell me what you remember about the conversation**  
11       **with Keegan. What did you say, what did he say,**  
12       **as best you remember?**  
13       A. I, what seemed like either that day or  
14       the next day, that same day, I said, you know,  
15       we got cash, right? Thinking that cash is king  
16       and we, you know, and instead of having illiquid  
17       assets and given the market volatility. And  
18       Mike said, well, we should have got more than 7  
19       billion. We should have got securities worth 7  
20       billion plus the haircut. I don't know that  
21       those were his words, you know, but ...  
22       **Q. Did he express any concern about the**  
23       **quality of the securities that came over?**  
24       A. No.  
25       **Q. No? Did anybody express concern about**  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       A. I would imagine -- I don't know that  
3       definitively. I would imagine that they had a  
4       lot of traders looking at the assets that came  
5       over. I would imagine they were trying to sell  
6       and trying to understand what -- I would imagine  
7       traders are looking at assets, one, to try to  
8       sell the assets and, two, to figure out who  
9       would borrow those securities so we could  
10       finance those positions.  
11       The Fed was going to allow us to put  
12       that collateral back to them into those three  
13       facilities, but not for a prolonged period of  
14       time. They had an expectation that we would --  
15       that they would be able to step out of the  
16       trade. They were able to, instead of finance  
17       Lehman Brothers, now they were financing  
18       Barclays, and they had an expectation that we  
19       would get rid of those assets or finance them  
20       through third parties.  
21       **Q. So Mike, the view that Mike expressed**  
22       **was you should have gotten the 42?**  
23       A. Should have gotten -- the view that  
24       Mike expressed was specifically was related to 7  
25       billion in cash.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. Okay.**  
3       A. Right? Because, theoretically, that 7  
4 billion in cash should have attracted something  
5 greater than \$7 billion in collateral.  
6       **Q. So, okay, so you have the 42 --**  
7       A. Uh-huh.  
8       **Q. -- of securities plus the 7 billion in**  
9 **cash?**  
10      A. Correct.  
11      **Q. Mike's view is if you got 7 billion,**  
12 **you should have gotten 7 billion more in**  
13 **securities plus a haircut?**  
14      A. Securities plus a haircut, correct.  
15      **Q. And nothing he says in this**  
16 **conversation expresses any view about the**  
17 **quality of what you did get, the securities that**  
18 **you did get?**  
19      A. No. I'm not a trader, so I'm not --  
20      **Q. I'm just trying to find out what Mike**  
21 **said.**  
22        (Exhibit 202, a document bearing Bates  
23 Nos. ECI-EX-00000042 through 43, marked for  
24 identification, as of this date.)  
25      **Q. Mr. LaRocca, I've put before you what**  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. Well, that's what I'm going to ask**  
3 **you.**  
4       A. Okay. Okay.  
5       **Q. Having looked through it, I don't want**  
6 **to spend a lot of time on this document, does it**  
7 **roughly lay out what the plan was with respect**  
8 **to --**  
9       A. Yeah, roughly it does. Right? So  
10 like I said, came back from the Fed on Wednesday  
11 night, mobilized the team, and they're obviously  
12 working through the night figuring out how we're  
13 going to do this.  
14      **Q. Now I'd like to move in time to --**  
15      A. Do you want this back?  
16      **Q. Just keep it over there because**  
17 **sometimes we go back to the exhibits.**  
18        (Exhibit 203, a document bearing Bates  
19 Nos. BCI-EX-00000080, marked for  
20 identification, as of this date.)  
21      **Q. Mr. LaRocca, you have in front of you**  
22 **a one-page e-mail which we have marked as**  
23 **Deposition Exhibit 203, bearing Bates No.**  
24 **BCI-EX-00000080?**  
25      A. Yes.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **we've marked as Deposition Exhibit 202, a**  
3 **two-page document bearing Bates number**  
4 **BCI-EX-00000042 to 43. Take a look through that**  
5 **and let me know whether you've seen the document**  
6 **before, and just let me direct your attention to**  
7 **your name at the very end of that distribution**  
8 **list.**  
9       A. I see I'm on the distribution.  
10       (Document review.)  
11      A. I don't recall seeing this, right?  
12 I've read it, right? And at a high level I  
13 understand it, but I suspect this is probably  
14 one of hundreds of documents that you'll have my  
15 name on.  
16      **Q. Okay. Well, having looked through it,**  
17 **and I understand you haven't had time to study**  
18 **it, does it roughly lay out -- we're on**  
19 **Thursday, September 18, shortly after midnight.**  
20 **See the time and date on there up at the top?**  
21      A. Yes, I see the time. I'm trying to  
22 put that in context.  
23        MR. STERN: Take your time to read it.  
24      A. All right. So this is Thursday in the  
25 early A.M. before we move the securities, right?  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. Do you recall receiving this e-mail?**  
3       A. Do not recall receiving this e-mail.  
4       **Q. Who is Marty Malloy?**  
5       A. Marty Malloy is a trader in our stock  
6 loan area who would be responsible for trying to  
7 finance some of this collateral with third  
8 parties after it arrived.  
9       MR. GAFFEY: Can we go off the record  
10 for one second?  
11       (Discussion off the record.)  
12      **Q. The e-mail is entitled "Totals for the**  
13 **Fed Facility Collateral," and there's an**  
14 **annotation on here that says, "Total securities**  
15 **and cash received: 52.19." I'm assuming these**  
16 **numbers are in the billions, yes? I can read**  
17 **that as 52.19 billion?**  
18      A. I would think so.  
19      **Q. Okay. And further up there, there's**  
20 **an entry that says "Repo Cash: 7 billion"?**  
21      A. Okay.  
22      **Q. I'm trying to get this into a timing**  
23 **context. Does this reflect how much value**  
24 **Barclays received -- well, thought it received**  
25 **as of September 19 at 11?**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. I have no idea. Right? I just have  
3 no idea. I don't know where Marty's getting  
4 these numbers from.  
5 **Q. Uh-huh.**  
6 A. How he's describing, you know, he's,  
7 you know, you know, he's reporting me some  
8 numbers. I'm on an e-mail where he's reporting  
9 some numbers that suggests we got 52 billion.  
10 This would have been 11:51 A.M., right?  
11 **Q. Uh-huh.**  
12 A. I just, I don't know how he -- I don't  
13 know where he got the numbers from or how he  
14 would have gotten the numbers from.  
15 **Q. There's a phrase you used before,**  
16 **"excess collateral," and there's an entry here**  
17 **for excess collateral of 7.19. What do you**  
18 **understand Mr. Malloy to be reporting to you**  
19 **there?**  
20 A. I have no -- I just don't know what  
21 that number is.  
22 **Q. Well, you got the repo cash amount.**  
23 **You know, actually, I'm not sure we've**  
24 **used this term all morning, so let me -- apart**  
25 **from the document for a moment, when you've been**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 know, it's a -- it's being -- I think of it as a  
3 reverse repo.  
4 **Q. Okay.**  
5 A. I think of a Fed replacement  
6 transaction as a reverse repo.  
7 **Q. So the repo cash amount that's listed**  
8 **here on Exhibit 203 --**  
9 A. Right.  
10 **Q. -- that would be -- that's the 45**  
11 **billion that Barclays sent over, yes?**  
12 A. I presume that's what it is, yes.  
13 **Q. And the margin which is put at 14**  
14 **percent here, right? Is that what you have**  
15 **referred to as the haircut?**  
16 MR. STERN: Objection to the form.  
17 A. I just don't know where these numbers  
18 are coming from or how Marty's derived it,  
19 right?  
20 **Q. Okay.**  
21 A. My recollection is having 42 and being  
22 short 7.  
23 **Q. You know, I'm going to go back to**  
24 **that. It's one of the reasons I'm being quite**  
25 **careful about -- as careful as I can be about**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **talking about the Fed facility?**  
3 A. Right.  
4 **Q. And then the Barclays what you call**  
5 **the replacement transaction?**  
6 A. Fed replacement transaction, right.  
7 **Q. These are repurchase agreements, yes?**  
8 A. I hesitate because I -- I don't, you  
9 know, I don't know how the, you know, I don't  
10 know if there are documents associated with the  
11 transaction and what the documents say, right?  
12 From a processing point of view, okay, from a  
13 processing point of view at a high level, I  
14 think of it as a simple reverse repo where I  
15 reverse in collateral and I pay cash.  
16 **Q. Uh-huh.**  
17 A. Now, the reality of that is, at a high  
18 level, but the devil's in the details, right, so  
19 the wirable securities are going to get  
20 processed one way, equities are going to get  
21 processed one way, corporates will get processed  
22 a different way, they're going to settle  
23 differently, how they're reflected in our  
24 systems, whether it be, you know, you know, so  
25 at the high level, I think like you think, you  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **the dates I'm asking about.**  
3 **This is the 19th at 11:14 A.M. We'll**  
4 **talk later about whether the 7 billion arrived**  
5 **and ultimately when it did or didn't, but if you**  
6 **could just sort of snapshot this for me at the**  
7 **time that you're seeing that e-mail, that's the**  
8 **frame I want to put around my questions, okay?**  
9 **We have marked as --**  
10 **Go ahead, sure.**  
11 MR. STERN: Let him ask a question.  
12 This is the next exhibit.  
13 (Exhibit 204, a document bearing Bates  
14 Nos. BCI-EX-00000081, marked for  
15 identification, as of this date.)  
16 **Q. Before you is Exhibit 204 bearing**  
17 **Bates No. BCI-EX-00000081, a one-page e-mail**  
18 **from you to Mike Keegan?**  
19 A. Right.  
20 **Q. And this appears to be you forwarding**  
21 **to Keegan Malloy's e-mail to you.**  
22 A. Yes.  
23 **Q. Why did you send that on to Keegan?**  
24 A. He would be Steven King's boss. No  
25 other reason than, you know, because Steven King  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 worked for Mike Keegan.

3 Q. Okay. Why would you send it on  
4 instead of King sending it on? Any reason?

5 A. Maybe Stephen King did. Maybe Stephen  
6 King did send it on. I don't know, right? You  
7 know, but Mike, like I said, Mike would be, as I  
8 indicated earlier, Mike would have some  
9 responsibility of managing a subset of this  
10 collateral that comes across. Stephen King  
11 works for Mike, so I'm not managing the  
12 collateral coming across.

13 Q. Yeah.

14 A. It would have been Marty Malloy who's  
15 got to finance it. Stephen King and Mike Keegan  
16 who have to manage the risk.

17 Q. In my own layman's terms, it sounds to  
18 me like your job is to get it in the house and  
19 somebody else's job to make money with it?

20 A. Absolutely. Absolutely.

21 Q. All right.

22 A. So Marty's got to worry about  
23 financing the assets. Mike Keegan and Stephen  
24 King have to worry about hedging it, managing  
25 the risk. Right?

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1 HIGHLY CONFIDENTIAL - G. LaROCCA

2 Q. When we talked a moment ago about  
3 Keegan being critical about accepting 7 billion  
4 in cash?

5 A. Uh-huh.

6 Q. One of the reasons I have shown you  
7 this document is to ask you whether it was this  
8 reference to 7 billion repo cash that --

9 A. No, would not, because Mike made the  
10 comment on the Monday after we -- because, you  
11 know, after we had taken the cash.

12 Q. Okay. Did you have any response from  
13 Mike -- there's sort of a gap in the sequence we  
14 talked about before over the weekend, and I just  
15 want to see if this refreshes your recollection.

16 A. No.

17 Q. Any conversations over the weekend or  
18 communications over the weekend with Mike about  
19 the 7 billion cash?

20 A. No. The, again, the -- my job almost  
21 kind of on Friday, it's kind of now with traders  
22 who got to figure out how to hedge, manage risk,  
23 and I'm not part of that -- it's not what I do.

24 Q. Okay. Was part of what you do,  
25 though, to, you know, as I said, your job is to  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 get it in the house, other people's job to make  
3 money with it. Is this reporting, this is a  
4 useful piece of information to you, yes? This  
5 is what somebody thinks arrived, yes?

6 A. It's of no utility to me. It's of  
7 little utility to anyone. Okay? What's going  
8 to be important is the detailed listing of the  
9 thousands and thousands and thousands of Cusips,  
10 the values that have been ascribed to each  
11 Cusip, and then traders could begin to do their  
12 work, right? This is -- this isn't worth the  
13 paper it's printed on. Just, you know, the --

14 Q. So, as you sit here today looking at  
15 it, you don't know one way or the other whether  
16 it's an accurate description?

17 A. Correct.

18 Q. Okay. We're done with that for now.  
19 Thanks.

20 A. I don't even know, okay, if the  
21 valuations, the running totals that I alluded to  
22 earlier, if they're current prices, the day  
23 before's close. You know, securities are coming  
24 across. I alluded to the ops. guys are trying  
25 to keep a running total, right? You know,

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 relying on systems.

3 I mean, you got to remember the  
4 markets are volatile, right? And everyone at  
5 Barclays is concerned that we're going to be  
6 short, you know, and because the markets  
7 movement, markets are moving, markets were very  
8 volatile during that period of time.

9 Q. Let's go back now into the chronology  
10 we were talking about before. When last we left  
11 it, you went to the closing, some stuff got  
12 signed, you went home and got some sleep.

13 You mentioned before Barclays was  
14 concerned that it might be short. Is there any  
15 determination made after the closing about that?

16 A. Again, I'm not privy to -- I'm just  
17 not in that circle, right? I mean...

18 Q. Well, let me ask you this. What are  
19 your activities with respect to the transaction  
20 starting on --

21 A. On the Monday?

22 Q. Yeah, after the closing.

23 A. Starting to work on integration,  
24 thinking about integrating -- let me pause.  
25 Would have been thinking about integration would

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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       have been an area of focus initially. Shortly  
3       after the close, the next day or Tuesday or  
4       Wednesday, it became evident that the 7 billion  
5       wasn't in our account. It would have been a  
6       huge area of focus, would have been on the phone  
7       with the Fed.  
8       So getting \$7 billion back,  
9       integration, and Barclays had provided some  
10      intraday liquidity to Lehman Brothers earlier in  
11      the week. We wanted to get that money back,  
12      too.  
13      **Q. What was the intraday -- describe the**  
14      **intraday liquidity they provided earlier in the**  
15      **week?**  
16      A. Barclays had -- Citigroup was going to  
17      resign as Lehman Brothers' CLS clearer, and  
18      Citigroup was going to resign as Lehman  
19      Brothers' clearing bank for foreign exchange,  
20      and Barclays provided some intraday liquidity.  
21      **Q. And if you could, this is an area I'm**  
22      **not familiar with, could you take me through the**  
23      **steps that that involves? I need a little more**  
24      **detail there.**  
25      A. CLS, the acronym stands for  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       So, you know, so after the -- going  
3       back to your original question, what was I  
4       focused on was, you know, getting our money back  
5       from Citibank, getting our \$7 billion from  
6       JPMorgan, starting to work on integration. You  
7       know, I'm not focused on asset valuation.  
8       That's the traders and risk and accountants who  
9       got to reflect it on our books and records.  
10      **Q. Now, the integration you're talking**  
11      **about, I just want to talk in top level terms,**  
12      **you're talking about integrating systems and**  
13      **people?**  
14      A. Yeah. Yeah. At the highest level,  
15      right.  
16      **Q. And does some of that integration**  
17      **process also involve determining what**  
18      **contracts --**  
19      A. No.  
20      **Q. -- need to be taken over --**  
21      **Let me just put the question so we**  
22      **have a clear record.**  
23      **-- what contracts need to be taken**  
24      **over, assumed by Barclays?**  
25      A. No, that wouldn't have been an area  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       "continuous link settlement," is a utility that  
3       enables its members to settle its foreign  
4       exchange transactions. Its members are often  
5       provided intraday liquidity by its clearing  
6       bank.  
7       Citigroup was Lehman Brothers'  
8       clearing bank. They had refused to -- or, they  
9       had informed Lehman Brothers of their intent to  
10      resign as Lehman Brothers' foreign exchange  
11      clearer. That's a public event that gets posted  
12      on their Website, and they were going to do that  
13      sometime -- they had indicated they were going  
14      to do that sometime the week of beginning the  
15      15th they had indicated that they were going to  
16      resign. That would have made a very, very  
17      difficult situation even more difficult, right?  
18      So Barclays -- I got on the phone,  
19      being a 30-year Wall Street guy, to the people I  
20      knew at Citibank and asked them not to do that,  
21      and that worked for a day or two, but then they  
22      wanted money. And Barclays advanced -- Barclays  
23      provided some intraday liquidity to Lehman  
24      Brothers. I don't recall the amount. I -- for  
25      some reason, 700 million rings a bell.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       that would have gotten any significant attention  
3       from me.  
4       **Q. From you, okay. Who would be the**  
5       **person to pay significant attention to that**  
6       **area?**  
7       A. The -- I'm trying I'll tell you what I  
8       do remember, okay, is there was -- there is  
9       reference to cure payments, right? And I don't  
10      know how I became aware of cure payments as that  
11      being -- that's an issue, right? We needed to  
12      pay Lehman's vendors because there was concern  
13      about them "turning off the lights" was the  
14      expression was used, right?  
15      So, from an integration point of view,  
16      you know, I became aware that there were cure  
17      payments and there were vendors that needed to  
18      be paid and Lehman had been delinquent in terms  
19      of paying some third parties.  
20      I think it was brought to my attention  
21      by Legal, okay? I understand Legal to be  
22      negotiating -- you know, there's cure payments  
23      component to the deal. So, at the highest  
24      level, that was kind of my understanding, and  
25      what I did was I assigned a resource to look  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2   after that. That gentleman's name is Jai  
3   Westwood. He's one of my direct reports and,  
4   you know, he would have, again, been trying to  
5   go figure out what needs to be done and be a  
6   central point of contact.  
7   **Q. And other than assigning him to it,**  
8   **did you have any involvement in it?**  
9   A. No.  
10       I want to clarify. There was the --  
11   other than assigning him, I had nothing to do  
12   with it, with the one exception being, and I'm  
13   not sure if it's days or weeks after, there was  
14   a debate or a dispute with American Express, and  
15   I didn't have much to do with it other than I  
16   knew there was some kind of disagreement between  
17   Barclays and American Express as to whether, you  
18   know, we should honor, step into that  
19   commitment.  
20       I don't know the details. It was  
21   brought to my attention by someone in Legal and  
22   Jai Westwood, and I said just reach a  
23   settlement. So, other than that, I was not  
24   involved -- not involved in that aspect of the  
25   integration contracts.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2   account into our account at Bank of New York,  
3   and I believe it was Tuesday that I was informed  
4   that the cash was no longer in our account.  
5   **Q. So what happened then?**  
6   A. Would have escalated it to numerous  
7   people.  
8   **Q. Presumably Rich Ricci, right?**  
9   A. Rich Ricci and Jonathan Hughes would  
10   have been certainly two people. Maybe more, but  
11   certainly would have alerted our legal group and  
12   Rich Ricci and would have also alerted the Fed.  
13   It would have been most likely Stephanie Heller  
14   at the Fed.  
15   **Q. Why would it most likely be Stephanie**  
16   **Heller at the Fed? Was that someone you dealt**  
17   **with?**  
18   A. Stephanie would have -- I think during  
19   the week I alluded to the fact that when we  
20   started the replacement transaction and JPMorgan  
21   wasn't moving the securities over in a timely  
22   basis, they wanted to hold the margin, right, to  
23   satisfy their liens against Lehman Brothers.  
24   Stephanie would have been the person that became  
25   my interface.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2   **Q. Let's go back to the area that you**  
3   **said was a huge area of focus. That's the,**  
4   **shortly after the closing, it was realized that**  
5   **7 billion was not in your account?**  
6   A. Yes.  
7   **Q. Take me through the steps of that.**  
8   **Who realizes it and what follows?**  
9   A. After that Monday, after the closing,  
10   we had -- we -- I had instructed our ops. guys  
11   to move the \$7 billion in cash out of our  
12   account at JPMorgan into our account at the Bank  
13   of New York.  
14       Our ops. guys instructed JPMorgan to  
15   move the cash. JPMorgan did not act on those  
16   instructions. That would have been escalated to  
17   me, their failure to act. We would have  
18   instructed again movement on Tuesday. Tuesday I  
19   believe I was alerted that the cash was no  
20   longer in our account.  
21       To the best of my recollection, that  
22   was the timeline. So Monday we believed the \$7  
23   billion was in our account. I had seen a bank  
24   statement to evidence its existence in our  
25   account. We tried to move the money out of our  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2   **Q. Okay.**  
3   A. Okay? So Lucinda Brickler was the  
4   person that we negotiated how the transaction  
5   was going to work, and then regarding the  
6   performance of JPMorgan during -- Stephanie  
7   somehow emerges as my interface.  
8   **Q. Okay. All right. So it's escalated**  
9   **to Ricci, Hughes --**  
10   A. And the Fed.  
11   **Q. -- and the Fed. What happens after**  
12   **that?**  
13   A. Then Jonathan Hughes becomes the  
14   primary interface with JPMorgan.  
15   **Q. Did you ever learn what happened to**  
16   **the \$7 billion? It was in your account?**  
17   A. It was in our account.  
18   **Q. And now it's not in your account?**  
19   A. Now not in our account.  
20   **Q. Did you ever learn where it went?**  
21   A. No.  
22   **Q. Through today you've never learned**  
23   **where the 7 billion went?**  
24   A. No.  
25   **Q. Do you know if Barclays got it back?**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. Well, I know we -- I know Barclays  
3 reached a settlement with JPMorgan. I was at  
4 that settlement at the bankruptcy court and we  
5 got something less than \$7 billion.  
6 Q. Do you know how much you got?  
7 A. I can't be precise. So if you want a  
8 definitive, specific amount, no. I think if you  
9 want a range, my recollection might have been in  
10 the 4 billion plus change, you know, 4 billion  
11 plus -- again, I'm, you know --  
12 Q. Yeah.  
13 A. -- it's not my, you know. If that was  
14 my job, I would know the numbers like I would  
15 know my phone number, but that wasn't --  
16 Q. What were the components of what you  
17 received, cash and securities?  
18 A. Cash component and stock component or  
19 cash and securities component. I don't know if  
20 the securities were equities, government, I just  
21 don't know.  
22 Q. Do you have any recollection of how  
23 much the cash component was?  
24 A. No.  
25 Q. And again, I'll ask you about the  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 what we have marked as Exhibit 205, a document  
3 entitled Motion Under 11 U.S.C. Sections 105 and  
4 363 and Federal Rule of Bankruptcy Procedure  
5 9019(a) for Entry of an Order Approving  
6 Settlement Agreement.  
7 It's a fairly long document. Take a  
8 minute, you don't have to read the whole thing,  
9 but just enough to familiarize yourself with  
10 what's in there.  
11 A. Is this the document that got --  
12 that's December that got presented or --  
13 Q. Yeah, I think so.  
14 A. December 22 --  
15 MR. STERN: Yes.  
16 A. Okay.  
17 Q. Just so you can put in your own head  
18 where we are here, there's an affidavit by you  
19 in here, which is the last document. It's like  
20 the last ten pages or so.  
21 A. The last ten pages?  
22 Q. Yeah.  
23 MR. STERN: Let me just show you.  
24 There's a motion, right? It's a legal  
25 motion. Then there's a settlement  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 quality of the securities that Barclays got as  
3 part of the JPM settlement. Do you have any  
4 knowledge about that?  
5 A. No.  
6 Q. So what I'm pressing on here a bit is  
7 what you know or don't know about the basis for  
8 saying you got -- that what Barclays got was  
9 worth something less than 7 billion. I'm just  
10 looking for your personal knowledge about that.  
11 Why do you say that?  
12 A. I was at the court proceedings and the  
13 judge asked for a value to be ascribed, and  
14 people testified that or, you know, that the  
15 value was significantly less than the \$7  
16 billion, so it should be a -- it should be -- it  
17 should be a court record. So my knowledge is  
18 what I've heard.  
19 Q. Okay.  
20 (Exhibit 205, Motion Under 11 U.S.C.  
21 Sections 105 and 363 and Fed. R. Bankr. P.  
22 9019(a) for Entry of an Order Approving  
23 Settlement Agreement, marked for  
24 identification, as of this date.)  
25 Q. Mr. LaRocca, I have put before you  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 agreement, and then after the settlement  
3 agreement, I think there are a couple of  
4 declarations. One is Shari Leventhal and  
5 one is yours.  
6 THE WITNESS: Uh-huh. Did I sign  
7 this?  
8 MR. STERN: Your declaration is --  
9 THE WITNESS: I know I signed this.  
10 Did I sign the settlement agreement? Rich  
11 did. Looks like Rich signed it. Okay.  
12 MR. STERN: So do you want him to  
13 review his declaration.  
14 Q. Yeah, my question -- my first question  
15 is have you seen all of this before, but then  
16 we're going to ask about your declaration.  
17 A. I clearly have seen my declaration. I  
18 think I've seen Shari Leventhal's declaration.  
19 I recall seeing Shari's declaration, although I  
20 don't remember it and I would have to read it  
21 again.  
22 Q. Okay.  
23 A. Regarding this -- the -- I don't  
24 recall -- I don't recall receiving this  
25 settlement agreement.  
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<p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       <b>Q. That's attached in there?</b></p> <p>3       A. That's attached. May have, because I</p> <p>4 got a lot of documents, but I don't recall</p> <p>5 receiving the settlement agreement.</p> <p>6       <b>Q. And do you recall seeing before --</b></p> <p>7 <b>there's another affidavit in here, Declaration</b></p> <p>8 <b>of Jeffrey Moore. It's the one right in front</b></p> <p>9 <b>of yours.</b></p> <p>10      A. No, I don't know who Jeffrey Moore is.</p> <p>11 Don't recall.</p> <p>12      <b>Q. Let me just clean up a little bit of</b></p> <p>13 <b>that and then we'll move into your declaration,</b></p> <p>14 <b>but take a look at -- could you turn to Jeffrey</b></p> <p>15 <b>Moore's declaration?</b></p> <p>16      A. Yeah, you know what? I'm reading this</p> <p>17 now.</p> <p>18      <b>Q. Yeah.</b></p> <p>19      A. I think I might have seen this now.</p> <p>20      <b>Q. That's the Jeffrey Moore declaration?</b></p> <p>21      A. Yeah.</p> <p>22      <b>Q. Okay.</b></p> <p>23      A. This is -- yeah, there's comment that</p> <p>24 the value of securities would be substantially</p> <p>25 less than the securities that the Fed valued on</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 that night was our biggest concern at Barclays.</p> <p>3 We didn't really know the values that had -- the</p> <p>4 Fed had ascribed. I think we were flying, I</p> <p>5 don't know, blind.</p> <p>6      <b>Q. Okay. Well, when Mr. Moore says in</b></p> <p>7 <b>paragraph 6 of his declaration, "In my opinion,</b></p> <p>8 <b>the value on the date hereof the 'Settlement</b></p> <p>9 <b>Consideration Fed Portfolio Securities'</b></p> <p>10 <b>identified in Annex A to the Settlement</b></p> <p>11 <b>Agreement that is the subject of the motion is</b></p> <p>12 <b>substantially less than \$5.743 billion (i.e.,</b></p> <p>13 <b>the difference between (x) \$7.0 billion and (y)</b></p> <p>14 <b>the sum of \$1.25 billion and \$7.1 million</b></p> <p>15 <b>referred to in Sections 1(a) and 1(c)(y) of such</b></p> <p>16 <b>Settlement Agreement."</b></p> <p>17      Translated, he seems to be saying that</p> <p>18 the securities component was worth less than</p> <p>19 5.743 billion.</p> <p>20      A. Okay.</p> <p>21      <b>Q. Do you know what Mr. Moore's basis was</b></p> <p>22 <b>for saying that?</b></p> <p>23      A. No idea.</p> <p>24      <b>Q. Okay. And at the time that these</b></p> <p>25 <b>papers were submitted to the bankruptcy court in</b></p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 or around December of 2008, did you have any</p> <p>3 knowledge yourself about the value of the</p> <p>4 securities component of the settlement?</p> <p>5      A. No, none whatsoever.</p> <p>6      <b>Q. Okay.</b></p> <p>7      (Exhibit 206, a letter from Hamish</p> <p>8 Hume dated July 31, 2009, marked for</p> <p>9 identification, as of this date.)</p> <p>10     <b>Q. If you could take a look at what we've</b></p> <p>11 <b>marked as Exhibit 206, Mr. LaRocca. I'd ask you</b></p> <p>12 <b>whether you have seen it before. Well, let me</b></p> <p>13 <b>ask you, have you seen it before?</b></p> <p>14     A. No, I don't think so.</p> <p>15     <b>Q. I'm giving you this just to frame the</b></p> <p>16 <b>next document I'm going to show you, and I'm</b></p> <p>17 <b>directing your attention to paragraph 1(c) of</b></p> <p>18 <b>this letter, which is from Mr. Stern's partner,</b></p> <p>19 <b>Hamish Hume, to me, dated July 21, and it's</b></p> <p>20 <b>transmitting some documents that were produced</b></p> <p>21 <b>in the case.</b></p> <p>22     Paragraph 1(c) refers to a spreadsheet</p> <p>23 from JPMorgan on December 16, 2008 showing</p> <p>24 securities that were to be delivered as part of</p> <p>25 the JPM settlement, and it's got a Bates number</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 range, okay?</p> <p>3      (Exhibit 207, a document bearing Bates</p> <p>4 Nos. BCI-EX-00099493 through 99517, marked</p> <p>5 for identification, as of this date.)</p> <p>6      <b>Q. Mr. LaRocca, I have in front of you</b></p> <p>7 <b>what we have marked as Exhibit 207, bearing</b></p> <p>8 <b>Bates Nos. 99493 through 99517. This is the</b></p> <p>9 <b>document referred to in the letter that I just</b></p> <p>10 <b>showed you.</b></p> <p>11     A. Uh-huh.</p> <p>12     <b>Q. That's the same Bates range. Have you</b></p> <p>13 <b>seen this schedule before?</b></p> <p>14     A. No, I don't believe so.</p> <p>15     <b>Q. Have you ever seen the schedule</b></p> <p>16 <b>showing securities that were to be delivered as</b></p> <p>17 <b>part of the JPM settlement, Annex A?</b></p> <p>18     A. No, I don't believe so. I want to</p> <p>19 clarify.</p> <p>20     <b>Q. Sure. Sure.</b></p> <p>21     A. Okay. I have no doubts, right, that</p> <p>22 there are schedules to -- that I am CC'd on that</p> <p>23 shows --</p> <p>24     <b>Q. Some number?</b></p> <p>25     A. -- listings of securities, of Cusips</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2 and, you know, that are going between Ops. and 3 salesmen or traders or Bank of New York or 4 JPMorgan. I mean, but, you know, my job is not 5 to reconcile, sort those things, so if I got 6 this, I wouldn't have even opened the 7 attachment. 8       <b>Q. Okay.</b> 9       A. And if so, you know, not only -- so I 10 don't recall seeing it, and I just wouldn't have 11 been looking at spreadsheets and -- 12       <b>Q. Okay.</b> 13       A. I don't have -- 14       <b>Q. As I get it, at best, what your job is</b> 15 <b>is to make sure whoever needs to see that to</b> 16 <b>analyze it does, yes?</b> 17       A. So if someone sent me a document that 18 this is what JPMorgan, I would have hit forward, 19 you know, John Rodefled, forward Marty Malloy, 20 and, sssht. 21       <b>Q. That's back to that air traffic</b> 22 <b>controller role we talked about before?</b> 23       A. Absolutely. I mean ... 24       <b>Q. I'm going to give you three documents</b> 25 <b>at once here. Now, I've placed before you,</b>       TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2 <b>Mr. LaRocca, what we have marked at previous</b> 3 <b>depositions as Exhibits 86B, 87B, and 88B, and</b> 4 <b>with respect to all three documents, I'll ask</b> 5 <b>you, have you seen them before?</b> 6       A. These specific documents, you know, 7 with absolute certainty, I don't recall. I 8 would not be surprised, again, not unlike the 9 comments I made earlier where, you know, I'm 10 CC'd or of every e-mail. These would be reports 11 prepared by our accounting group. 12       <b>Q. Okay.</b> 13       A. But I wouldn't do any -- you know, 14 again, very much like, you know, someone giving 15 me an FYI, this is kind of how it's broken out, 16 right? 17       <b>Q. Well, let me ask you this, and again,</b> 18 <b>with respect to all three, if I were to go</b> 19 <b>through the columns on these documents and ask</b> 20 <b>you what they mean and what this is meant to</b> 21 <b>show?</b> 22       A. I can speculate, but I couldn't tell 23 you with a hundred percent certainty. Right? 24       <b>Q. Okay. Do you know, as a general</b> 25 <b>matter, again, without regard to the documents</b>       TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2 <b>in your hand --</b> 3       A. Yeah. 4       <b>Q. -- just generally, do you know if any</b> 5 <b>work or any type of project was undertaken</b> 6 <b>within Barclays to value the securities received</b> 7 <b>in connection with the JPM settlement?</b> 8       A. In connection with? 9       <b>Q. With the settlement. With the</b> 10 <b>discussion.</b> 11       A. The \$7 billion? 12       <b>Q. Yes.</b> 13       A. I can't be certain. 14       <b>Q. Okay.</b> 15       A. I know that there was -- I believe, I 16 believe that there was a spreadsheet of 17 securities that would come across as part of the 18 settlement and I would think that our traders 19 put a value to, but I wouldn't have had sight of 20 that or -- 21       <b>Q. Or involvement in it?</b> 22       A. Yeah, or involvement in it, but I 23 don't think we would agree to a settlement 24 without the -- without getting a look at the 25 collateral that was going to move.       TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       <b>Q. Okay. I want to go back to Exhibit</b> 3 <b>205.</b> 4       MR. GAFFEY: That's the motion papers, 5 please, Jack. 6       <b>Q. And I want to spend a little time,</b> 7 <b>Mr. LaRocca, on your declaration. If you could</b> 8 <b>turn to that.</b> 9       A. Which is page? 10       <b>Q. The problem is I don't have page</b> 11 <b>numbers. I believe it's the last six or seven</b> 12 <b>pages. Actually, if you hand me the document,</b> 13 <b>I'm get you right there.</b> 14       A. I got it. 15       <b>Q. So we're at the Declaration of Gerard</b> 16 <b>LaRocca in Support of the Trustee's Motion For</b> 17 <b>Entry of Order Approving the Settlement</b> 18 <b>Agreement?</b> 19       A. Yes. 20       MR. STERN: Have you read this in a 21 while? He may need to read it. 22       THE WITNESS: Not in a while. 23       <b>Q. Why don't you take a minute and read</b> 24 <b>it through because we're going to spend some</b> 25 <b>time on this.</b>       TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       <b>(Discussion off the record.)</b> 3       <b>(Document review.)</b> 4       A.   Okay. 5       Q.   Okay? 6       A.   Yep. 7       Q.   As a general matter, at the time that 8       you signed this, you reviewed it and determined 9       that it was true? 10      A.   Uh-huh. Correct. 11      Q.   And where you say in paragraph 1 of 12      the declaration that you have -- that, "Except 13      where stated otherwise, I have personal 14      knowledge of the facts set forth in this 15      declaration," that statement is true as well, 16      yes? 17      A.   Right. 18      Q.   Now, in your declaration, Mr. LaRocca, 19      you generally describe what you've been 20      referring to here as the replacement 21      transaction? 22      A.   Uh-huh. 23      Q.   That's when Barclays begins to supply 24      financing that the Fed previously had supplied, 25      yes?           TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       A.   Correct. 3       Q.   And you say in paragraph 6 of your 4       declaration -- withdrawn. Who drafted this 5       declaration for you to sign? 6       A.   Jonathan Hughes. Now, Jonathan Hughes 7       would have drafted it. 8       Q.   And I don't want to know the substance 9       of your conversations with Mr. Hughes, but I'd 10      like a yes/no answer to this question. Did it 11      go through more than one draft? 12      A.   Yes. 13      Q.   Did it go through more than one draft 14      so that you could be certain that what you were 15      saying in there was accurate? 16      A.   Correct. 17      Q.   And again, without the substance, just 18      yes or no, please, did you make corrections to 19      drafts that you saw before a final was arrived 20      at, as opposed to others making corrections? 21      A.   Yes. 22      Q.   Okay. If you could go back to 23      paragraph 6, you describe in there that -- I'm 24      at the second sentence: "Thus, as Barclays and 25      LBI had agreed, Barclays transferred \$45 billion           TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       to LBI at a JPMorgan account that afternoon and 3       early evening," right? 4       Neither there nor anywhere else in the 5       declaration is there a reference to the 6       securities that LBI transferred to Barclays as 7       part of this repo. 8       A.   Okay. 9       Q.   Is there a reason for that? 10      MR. STERN: Objection to the form. 11      You say "reference to the securities." 12      Well -- 13      Q.   Actually, let me be a little more 14      precise. 15      MR. STERN: Paragraph 6 -- 16      Q.   In paragraph 5 there's a reference to 17      securities being pledged. My question is 18      there's no reference to the amount, the value of 19      securities being sent over? 20      A.   There's no reference to the value, 21      correct. 22      Q.   Is there a reason for that? 23      A.   No particular reason at the time. It 24      wasn't a conscious omission or anything, just, 25      you know, I wouldn't have known the value so I           TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       couldn't make a declaration, right? 3       Q.   And you describe through paragraphs 6, 4       7, 8 and 9 what we've been talking about a bit 5       today? 6       A.   Uh-huh. 7       Q.   Which are the difficulties in 8       executing fully on the transaction and the story 9       about the 7 billion cash? 10      A.   Uh-huh. 11      Q.   Is that a fair summary? 12      A.   Correct. 13      Q.   In paragraph 9 refers to opening of 14      business on September 19. You with me there? 15      It's the second sentence. 16      A.   Paragraph 9, yep. 17      Q.   What you're describing there -- let me 18      read the first two sentences: "When the Fed, 19      Barclays and LBI originally agreed to engage in 20      the replacement transaction, the parties 21      intended for all of the Fed portfolio securities 22      to be delivered to Barclays under the 23      replacement transaction. As that had not 24      happened as contemplated by the opening of 25      business on Friday, September 19, 2008, LBI and           TSG Reporting - Worldwide (877) 702-9580</p>

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Barclays discussed during the business day on September 19 and into the weekend of September 20, 2008, the transfer to Barclays of the portion of the federal portfolio securities that had not yet been delivered as originally contemplated."

I read you that again to put you at a place and a time. We're on the morning of September 19. Did at any time, sir, it come to your attention, cross your screen in any way that there would be an effort by Lehman to find additional value to give to Barclays? By "additional," I mean apart from what was contemplated in the transfer of the Fed portfolio over to Barclays.

A. Not as it relates to the Fed replacement transaction.

Q. Okay. Do you have knowledge of that as it relates to something else?

A. The -- not specific detailed knowledge.

Q. Uh-huh.

A. My -- the context is Barclays is, again, being around, you know, I'm aware that, TSG Reporting - Worldwide (877) 702-9580

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you know, Barclays is trying to derive value from the transaction because of we're acquiring a firm, assets that we don't know the value of, assets -- you know, so I'm aware that there's discussion on how do we get value out of this transaction, how do we make sure we don't inherit a mess, don't get toxic assets, don't lose money, you know, the view of management or the people is that, you know, this is a very risky transaction to Barclays and we're going to end up with collateral from the repo transaction that we're not sure what it's worth, you know, the market, you know, so I'm -- you know, but not -- I wasn't privy or part of the deal team at all in terms of other elements of the transaction.

Q. You were in court for a part of the hearing on Friday, the 19th, part of the hearing before Judge Peck on the 19th, correct?

A. Correct.

Q. Okay. We talked about that a bit before.

A. Yeah.

Q. At any point during that hearing did TSG Reporting - Worldwide (877) 702-9580

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you hear anyone tell the judge that the value of the deal had dropped?

A. I don't recall.

Q. Did you have an understanding by Friday, the 19th, that the value of the deal had decreased, had dropped?

A. On Friday, the 19th?

Q. Yes.

A. From what point -- from what perspective?

Q. From the deal that had been contemplated on Tuesday, the 16th, to the situation as it existed on September -- on Friday, the 19th?

A. Not in a detailed way. I knew that the deal had changed in some way, but no specifics.

Q. You mentioned a bit before, I think, I may be wrong about this, I think you said it was on the Thursday you used a phrase like the lightbulb went on and you realized we're not buying a broker-dealer at this point?

A. Yeah.

Q. Now we're buying assets?

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A. Yes.

Q. Moving into the Friday morning -- actually, anytime during the Friday, did it ever come to your attention that Barclays had demanded from Lehman that additional sources of value be found and turned over to Barclays, other than the assets that were within the repo?

A. Yes, but no specifics, right? And I would have -- so, yes, right? I was aware that Barclays was looking to give value from the transaction other than the repo, right? And my experience with the repo, right, and the core information that Lehman had provided to us relative to kind of what they believed to be held at the Fed, right, forced me to be cautious about all information that we would have gotten from Lehman.

So the -- would have alerted Rich, Rich, you know, Lehman hasn't been able to produce a position report, reconcile bank accounts, reconcile stock record for weeks, right, so you need to be very cautious about value that they say exists.

I could give you a very specific

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<p style="text-align: right;">Page 102</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 example.</p> <p>3       <b>Q. Okay.</b></p> <p>4       A. There was some foreign exchange. You</p> <p>5 can settle European currencies, what I call G7,</p> <p>6 you know, in CLS. It's kind of a riskless</p> <p>7 settlement process, right? So that's why I was</p> <p>8 very comfortable for Barclays to provide some</p> <p>9 intraday liquidity. Settlement is certain,</p> <p>10 right?</p> <p>11       Lehman Brothers has foreign exchange</p> <p>12 transactions that settled in local markets.</p> <p>13 They settle outside CLS. They believe that they</p> <p>14 had a bunch of foreign exchange trades that, if</p> <p>15 settled, right, would result in value to the</p> <p>16 organization, to Lehman Brothers, right? Their</p> <p>17 information was two weeks old, right?</p> <p>18       And I said, you know, Rich, I said,</p> <p>19 those trades closed out weeks ago. Those</p> <p>20 counterparties walked away from those trade. So</p> <p>21 that was kind of the environment, right? So, do</p> <p>22 I believe Barclays was looking for value? I</p> <p>23 believe Barclays was grasping at straws because</p> <p>24 there was so much uncertainty, so much risk.</p> <p>25       <b>Q. And specifically with reference to the</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 103</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>Friday, the 19th, and looking for value, there's</b></p> <p>3 <b>two general --</b></p> <p>4       A. I can't tell --</p> <p>5       MR. STERN: Let him ask you a</p> <p>6 question.</p> <p>7       <b>Q. Let me frame it so you know what I'm</b></p> <p>8 <b>looking for. We've got the assets that are</b></p> <p>9 <b>within the repo, right?</b></p> <p>10       A. Yeah.</p> <p>11       <b>Q. And you mentioned before, and we'll</b></p> <p>12 <b>talk some more about this, how the deal became</b></p> <p>13 <b>moving those assets over to Barclays?</b></p> <p>14       A. Uh-huh.</p> <p>15       <b>Q. My question goes to, outside that box,</b></p> <p>16 <b>are there other categories of assets that</b></p> <p>17 <b>Barclays told Lehman it wanted in order to close</b></p> <p>18 <b>the deal?</b></p> <p>19       MR. STERN: Objection. I have to</p> <p>20 object to the form of that.</p> <p>21       <b>Q. You can answer it anyway, sir. I'm</b></p> <p>22 <b>not too worried about admissibility. I just</b></p> <p>23 <b>want to set a platform here.</b></p> <p>24       A. I can't give you any specifics. I</p> <p>25 wouldn't have been part of any of that. You</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 104</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2 know, I wouldn't have been involved in any</p> <p>3 detailed way.</p> <p>4       <b>Q. Does the phrase "15c3 funds" ring a</b></p> <p>5 <b>bell?</b></p> <p>6       A. Yeah, absolutely. Right? Lehman</p> <p>7 Brothers believed that there was an excess in</p> <p>8 15c3 based upon a calculation they did two weeks</p> <p>9 ago. I would have alerted our deal team that,</p> <p>10 you know, they can't substantiate any of this</p> <p>11 data.</p> <p>12       <b>Q. Do you know if the 15c3 excess was</b></p> <p>13 <b>transferred to Barclays as part of the</b></p> <p>14 <b>transaction?</b></p> <p>15       A. No idea.</p> <p>16       <b>Q. Do you know anything about an effort</b></p> <p>17 <b>to find assets, unencumbered assets, in</b></p> <p>18 <b>clearance boxes?</b></p> <p>19       A. I don't know. Can you ask the</p> <p>20 question again?</p> <p>21       <b>Q. You know what, I'm going to withdraw</b></p> <p>22 <b>that. There's a letter I want to show you and</b></p> <p>23 <b>it's got some stuff in it. It's probably more</b></p> <p>24 <b>focused if I give it to you that way.</b></p> <p>25       Can we go back to your deposition --</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 105</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>I'm sorry, your declaration for a minute? You</b></p> <p>3 <b>describe in here, I'm at paragraph 10 --</b></p> <p>4       You're going to need to go back into</p> <p>5 that.</p> <p>6       A. Paragraph 10, yes.</p> <p>7       <b>Q. We're at paragraph 10, and you're</b></p> <p>8 <b>describing how the replacement transaction was</b></p> <p>9 <b>structured as a reverse repurchase transaction?</b></p> <p>10       A. Uh-huh, yes.</p> <p>11       <b>Q. And you say, "As part of the APA" --</b></p> <p>12 <b>that would be the Asset Purchase Agreement?</b></p> <p>13       A. Yeah.</p> <p>14       <b>Q. "As part of the APA, however, Barclays</b></p> <p>15 <b>would be acquiring (without LBI having any</b></p> <p>16 <b>repurchase obligations) the very securities that</b></p> <p>17 <b>had been delivered under the Replacement</b></p> <p>18 <b>Transaction. Thus, at the closing of the APA</b></p> <p>19 <b>transaction on Monday, September 22, 2008, the</b></p> <p>20 <b>Clarification Letter to the APA, dated as of</b></p> <p>21 <b>September 20, 2008 (the 'Clarification</b></p> <p>22 <b>Letter')," in paren, "simply terminated the</b></p> <p>23 <b>repurchase part of the Replacement Transaction</b></p> <p>24 <b>with respect to 'all securities and other assets</b></p> <p>25 <b>held by' Barclays 'under the September 18, 2008</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **repurchase arrangement among' Barclays and LBI.**  
3 **This termination meant that all of the**  
4 **securities that were actually delivered on**  
5 **September 18, 2008, and that were by then held**  
6 **in a Barclays account at the Bank of New York**  
7 **were 'deemed to constitute part of the Purchased**  
8 **Assets' under the APA (and thus LBI would have**  
9 **no further obligation to 'repurchase' those**  
10 **securities and Barclays would not be obligated**  
11 **to deliver such securities back to LBI)."**

12 **Now, I want to go through that a bit**  
13 **and maybe decode it into some layman's terms,**  
14 **but also, first, did you have -- when you signed**  
15 **this declaration and it was referring to all the**  
16 **securities and other assets held by Barclays,**  
17 **that would be that would go to Barclays when the**  
18 **replacement transaction was simply terminated,**  
19 **when the repo was simply terminated, did you**  
20 **have an idea what the value, what the quantum of**  
21 **those securities were?**

22 A. No.

23 Q. Do you know if they exceeded the \$45  
24 billion that Barclays had given Lehman?

25 A. No.

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. Correct.  
3 Q. And a repo as it normally is  
4 conducted, the next day or whatever the term of  
5 the repo is, yesterday's purchaser sells it  
6 back?

7 A. Correct.

8 Q. And delivers back the excess  
9 collateral less the implied interest rate,  
10 right?

11 A. Uh-huh.

12 Q. Now, you mentioned a little while ago  
13 that it came to your attention, it was described  
14 to you somehow that in a bankruptcy that might  
15 not be the way things go?

16 A. The unwind would not, right.

17 Q. Can you expand on that a little bit?  
18 What did you learn about the difference between  
19 what happens in the unwind on a bankruptcy and  
20 an unwind in a non-bankruptcy situation?

21 A. Nothing too interesting here. Very  
22 simple, right? So when we agreed to step in for  
23 the Fed as providing financing, and we agreed a  
24 reverse repo, I would have talked to our lawyer,  
25 Jonathan Hughes, our general counsel, and said

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 Q. You talked a bit before about that --  
3 you've used the term "excess collateral"?

4 A. Uh-huh.

5 Q. And you said you viewed this as,  
6 essentially, a reverse repo?

7 A. Yes.

8 Q. Is it your understanding that in a  
9 reverse repo there was a haircut?

10 A. Correct.

11 Q. There is protection of some kind?

12 A. Yes.

13 Q. So, and that protection is to be found  
14 in the difference between the amount --

15 A. Of cash.

16 Q. -- funded --

17 A. Correct.

18 Q. -- by the purchaser?

19 A. Uh-huh.

20 Q. And the collateral pledged --

21 A. Pledged.

22 Q. -- by the seller --

23 A. Uh-huh.

24 Q. -- in the first leg of the repo,  
25 right?

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 we can't do the unwind, and Jonathan would have  
3 said, under bankruptcy law, right, the repo,  
4 you, you know, you don't do the unwind, the  
5 assets don't get tied up, in bankruptcy  
6 proceedings you own the collateral. Nothing  
7 more than that.

8 Q. Any distinction between, in that  
9 analysis, between the -- between the amount  
10 financed and the excess collateral? Let's use a  
11 45 and 50 billion dollar example. There's \$45  
12 billion advanced by the purchaser --

13 A. Right.

14 Q. -- here Barclays to Lehman, right?

15 And there's 50 billion in security  
16 pledged by Lehman to Barclays?

17 A. It's commonplace, right, if you're  
18 going to close out a repo or close out a  
19 counterparty, the margin is -- accrues to the  
20 dealer, the person that's reversing the  
21 collateral, to cover their risk associated with  
22 a fire sale or collateral liquidation, right?

23 Q. Okay. So I want to deal with your  
24 understanding of a default in a non-bankrupt  
25 circumstance. You may have just answered that,

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **but I want to make my record as clear as I can.**  
3 **Absent bankruptcy, there's no**  
4 **bankruptcy, and there's a default on a**  
5 **repurchase obligation?**  
6 **A. Right.**  
7 **Q. Then yesterday's purchaser --**  
8 **A. Yes.**  
9 **Q. -- is holding the collateral?**  
10 **A. Plus margin.**  
11 **Q. Plus margin, right?**  
12 **What's your understanding of who gets**  
13 **the margin in that circumstance?**  
14 **A. I believe the person that owns the**  
15 **collateral.**  
16 **Q. Okay. Gets to keep it all?**  
17 **A. Gets to keep it all. Don't know that**  
18 **definitively, but that's my understanding.**  
19 **Q. And in a bankruptcy situation, does**  
20 **that change?**  
21 **A. I don't know definitively.**  
22 **Q. Okay. Did you have, at the time of**  
23 **the transaction, did you have an understanding**  
24 **of what you thought happened in a bankruptcy**  
25 **situation?**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **letter it was agreed to simply terminate the**  
3 **repurchase?**  
4 **A. I'm sorry, I don't understand your**  
5 **question, right? You know, my --**  
6 **Q. Let me try and rephrase it, then,**  
7 **because I don't want to be at cross purposes.**  
8 **If it was your understanding that**  
9 **you'd get to keep the margin anyway?**  
10 **A. Uh-huh.**  
11 **Q. Why would you have to terminate the**  
12 **repurchase?**  
13 **MR. STERN: Objection to the form.**  
14 **A. I'm not sure I understand your**  
15 **question. Here, the declaration says the**  
16 **termination of the repo, it facilitates that**  
17 **those transactions become a part of the Asset**  
18 **Purchase Agreement. You know, the --- I'm not**  
19 **trying to be difficult.**  
20 **Q. No, no, it's a difficult topic, and**  
21 **I'm -- I don't think you're trying to be**  
22 **difficult.**  
23 **A. Okay.**  
24 **Q. It's a complicated thing to ask**  
25 **questions about and to get answers on, so we'll**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **A. My understanding is that we would be**  
3 **left with the collateral, right? And there was**  
4 **hope that the collateral would be in excess of**  
5 **the cash, right?**  
6 **Q. And in the bankruptcy, when there's a**  
7 **bankruptcy in the picture, what was your**  
8 **understanding as to who gets to keep the margin?**  
9 **A. The Barclays would keep the margin.**  
10 **Q. And you described in paragraph 10 of**  
11 **your declaration that the repurchase was -- and**  
12 **these are the words -- "simply terminated," end**  
13 **paren, and you're referring to the clarification**  
14 **letter.**  
15 **A. I'm sorry, where does it reference?**  
16 **Q. I'm in paragraph 10.**  
17 **A. "Simply" --**  
18 **Q. It's the third sentence of the**  
19 **paragraph that begins "thus at the closing."**  
20 **A. Right.**  
21 **Q. Just read through that sentence in**  
22 **full to yourself.**  
23 **A. Yes. Okay.**  
24 **Q. I guess my question is, did you have**  
25 **an understanding as to why in the clarification**  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **just have to work at it a little bit.**  
3 **I'm going to show you what was marked**  
4 **at a prior deposition, sir, as Exhibit 25.**  
5 **That's a copy of the clarification letter that I**  
6 **think you're referring to in paragraph 10.**  
7 **Take a look through that, sir, and**  
8 **tell me if you've seen it before and take note**  
9 **of what appears to be your signature at the end.**  
10 **A. Actually, I don't recall seeing it**  
11 **before. Is my signature on a page?**  
12 **Q. Take a look at the --**  
13 **A. It wouldn't surprise me since I'm an**  
14 **officer of BCI.**  
15 **There it is, okay.**  
16 **Q. You got it there?**  
17 **A. Uh-huh.**  
18 **Q. That's your signature?**  
19 **A. Yeah, absolutely.**  
20 **Q. Okay. And if you can --**  
21 **A. I see this one didn't have it. That's**  
22 **why --**  
23 **MR. STERN: It's different page.**  
24 **THE WITNESS: Is there a different**  
25 **page? There it is, okay.**  
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<p style="text-align: right;">Page 114</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       <b>Q. You see where your signature is?</b></p> <p>3       A. Yes.</p> <p>4       <b>Q. Now, the signature pages are what are</b></p> <p>5 <b>sometimes referred to as counterpart signature</b></p> <p>6 <b>pages. When you signed, do you recall if when</b></p> <p>7 <b>you signed the document the signature page was</b></p> <p>8 <b>attached to it?</b></p> <p>9       A. I don't remember.</p> <p>10      <b>Q. Do you have any recollection of just</b></p> <p>11 <b>signing signature pages?</b></p> <p>12      A. I wouldn't normally do that. Right?</p> <p>13      <b>Q. When you signed an agreement, you</b></p> <p>14 <b>would read through it before you signed it?</b></p> <p>15      A. One of two things. I would either</p> <p>16 read it myself, but I don't always read all the</p> <p>17 documents, or I would want to know who has --</p> <p>18 where the document comes from, who signed it,</p> <p>19 who's authorized it, right? Whether Legal has</p> <p>20 seen it.</p> <p>21      <b>Q. Do you have any recollection of what</b></p> <p>22 <b>process you went through with respect to --</b></p> <p>23      A. Don't even -- don't even remember the</p> <p>24 document.</p> <p>25      <b>Q. I need to just put a full question on</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 115</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>the record, okay?</b></p> <p>3       <b>Do you have a recollection of what</b></p> <p>4 <b>process you went through with respect to the</b></p> <p>5 <b>clarification letter marked as Deposition</b></p> <p>6 <b>Exhibit 25?</b></p> <p>7       A. No.</p> <p>8       <b>Q. Okay.</b></p> <p>9       MR. GAFFEY: Let's go off the record</p> <p>10 for a second.</p> <p>11 (Discussion off the record.)</p> <p>12 (Luncheon Recess; Time Noted: 12:15</p> <p>13 P.M.)</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 116</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       AFTERNOON SESSION</p> <p>3       (Time Noted: 12:58 P.M.)</p> <p>4       GERARD LaROCCA, resumed and</p> <p>5 testified further as follows:</p> <p>6 EXAMINATION BY (Cont'd.)</p> <p>7 MR. GAFFEY:</p> <p>8       <b>Q. I want to mark another set of</b></p> <p>9 <b>documents so we can talk about them as a set.</b></p> <p>10      Mr. LaRocca, I'm putting before you</p> <p>11 what was marked at a previous deposition as</p> <p>12 Exhibit 1 and Exhibit 24 and Exhibit 51.</p> <p>13      Now, what I've put before with you,</p> <p>14 Mr. LaRocca, Exhibit 1 is entitled Asset</p> <p>15 Purchase Agreement, Exhibit 24 is a First</p> <p>16 Amendment, Exhibit 51 is entitled Transfer and</p> <p>17 Assumption Agreement, and then before the break,</p> <p>18 I put in front of you Exhibit 25, which is the</p> <p>19 clarification letter.</p> <p>20      A. Yes.</p> <p>21      <b>Q. All right. So for a while I want to</b></p> <p>22 <b>ask you some questions about this collection of</b></p> <p>23 <b>documents.</b></p> <p>24      First, let me just ask you to take a</p> <p>25 look at them sufficiently to tell me whether</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 117</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2 <b>you've seen each one before and whether each of</b></p> <p>3 <b>them bears your signature.</b></p> <p>4       A. They do bear my signature.</p> <p>5       <b>Q. Okay.</b></p> <p>6       MR. STERN: Read them carefully now.</p> <p>7 I'm not sure they all do.</p> <p>8       A. The Transfer and Assumption Agreement</p> <p>9 bears my signature.</p> <p>10      <b>Q. Okay.</b></p> <p>11      A. And I believe the Asset Purchase</p> <p>12 Agreement has my signature. Yes.</p> <p>13      <b>Q. And I think what Jack may be referring</b></p> <p>14 <b>to --</b></p> <p>15      A. The First Amendment does not bear my</p> <p>16 signature.</p> <p>17      <b>Q. Okay. Do you recognize that to be the</b></p> <p>18 <b>signature of Archibald Cox?</b></p> <p>19      A. You know what, I'm not familiar with</p> <p>20 his John Hancock --</p> <p>21      <b>Q. All right.</b></p> <p>22      A. -- to definitively opine.</p> <p>23      <b>Q. Put the First Amendment aside for the</b></p> <p>24 <b>moment. What do you generally recognize these</b></p> <p>25 <b>documents to be?</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**

2 A. I would just categorize them as part  
3 of the agreements and documentation associated  
4 with the Barclays transaction with Lehman  
5 Brothers.

6 Q. Now, the first of these that I want to  
7 ask you about is Exhibit 1, the Asset Purchase  
8 Agreement.

9 A. Uh-huh.

10 Q. When we spoke before the lunch break,  
11 you described your understanding of what was  
12 going on in the early part of the week  
13 post-bankruptcy. I'm in that week starting the  
14 15th, the Monday.

15 As purchasing a broker-dealer --

16 A. Correct.

17 Q. -- and later in the week, don't hold  
18 me to the particular date, but I think you said  
19 on the Thursday, on the 18th, you understood  
20 that it was now to be an Asset Purchase  
21 Agreement, that a lightbulb went on, and --

22 A. Uh-huh.

23 Q. Taking a look at Exhibit 1, which is  
24 entitled "Asset Purchase Agreement," I want to  
25 revisit that a little bit.

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**

2 A. Uh-huh.

3 Q. Did you understand it to be an Asset  
4 Purchase Agreement at the outset?

5 A. When you say "at the outset," we're  
6 buying Lehman Brothers. That transaction falls  
7 apart. Come in on Monday, it's kind of, you  
8 know, I'm thinking now we're just buying the  
9 broker-dealer, the piece that hadn't filed for  
10 bankruptcy. And then somewhere over the next  
11 day or two or three, I don't recall when, you  
12 know, I'm beginning to hear, we're not buying  
13 LBI, LBI is going to declare bankruptcy, we're  
14 going to take the employees and buy certain  
15 assets.

16 Q. Okay.

17 A. Okay?

18 Q. And you're going to buy --

19 A. And maybe some real estate I think at  
20 that time.

21 Q. So I want to go back to the Monday and  
22 the Tuesday. You have said several times you're  
23 not part of the deal team?

24 A. Uh-huh.

25 Q. Which I take it to mean is you're not  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 involved in the negotiations of the business  
3 terms?

4 A. Correct.

5 Q. The Asset Purchase Agreement that we  
6 have marked as Exhibit 1 is dated as of --

7 A. The 16th.

8 Q. -- the 16th of September. That's the  
9 Tuesday.

10 Did you sign the agreement on the  
11 Tuesday?

12 A. I don't recall.

13 Q. Do you recall anything about the  
14 circumstances when you signed the agreement?

15 A. I don't recall.

16 Q. Okay. Do you remember if the  
17 signature page that you signed was attached to  
18 the agreement when you signed it?

19 A. I would think so because, like as a  
20 rule of thumb, I don't sign --

21 Q. Free-standing signature pages?

22 A. -- free-standing signature pages.

23 Q. And before the break I asked you, you  
24 know, with regard to the clarification letter if  
25 you read it before you signed it, and you told

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 me your practice is to either read something and  
3 understand it before you sign it or, and I'm  
4 paraphrasing you, have somebody --

5 A. Take me through it.

6 Q. -- take you through it and make you  
7 understand what it is you're signing, yes?

8 A. Correct.

9 Q. Do you recall which of those two  
10 practices you followed with regard to signing  
11 the Asset Purchase Agreement dated September 16?

12 A. I probably would have had -- I can't  
13 say with certainty, but, you know what, as it  
14 relates to the Asset Purchase Agreement, had I  
15 read it, I would remember it. So it probably  
16 was a discussion with one of the lawyers on our  
17 deal team.

18 Q. By the Tuesday, the 16th, had anyone  
19 described to you the economic terms of the  
20 transaction?

21 A. No.

22 Q. Did you have an understanding as to  
23 whether there was a discount being applied to  
24 securities being purchased pursuant to the Asset  
25 Purchase Agreement?

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. No.  
3 Q. Did you have an understanding as to  
4 the total amount of securities that were being  
5 transferred from Lehman to Barclays under the  
6 first agreement you have there?  
7 A. No.  
8 Q. That is, Exhibit 1?  
9 A. No.  
10 Q. Did you have any knowledge of what the  
11 components of the price to be paid by Barclays  
12 were on September 16?  
13 A. No.  
14 Q. Did you ask anyone?  
15 A. No.  
16 Q. Would you take a look at the Transfer  
17 and Assumption Agreement. Now, that is -- it  
18 says in its first line was executed on September  
19 20, which would be the Saturday, right? And do  
20 you recall if you signed it on September 20?  
21 A. I don't recall when I signed it.  
22 Definitely my signature.  
23 Q. Okay. The last page appears to me as  
24 if it may be a fax --  
25 A. It looks like it was.  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **Number 397038, Version 3?**  
3 A. Uh-huh.  
4 Q. Does that suggest to you that the  
5 signature page was prepared on a different word  
6 processing system than the two pages that  
7 precede it?  
8 A. I don't know what it suggests, you  
9 know?  
10 Q. Okay.  
11 A. Would have never even noticed it had  
12 you not pointed it out to me.  
13 Q. And does it refresh your recollection  
14 one way or the other as to whether you signed --  
15 A. No.  
16 Q. -- a free-standing signature page for  
17 the Transfer and Assumption Agreement?  
18 A. No, it doesn't. It doesn't.  
19 Q. Do you know what the purpose of the  
20 Transfer and Assumption Agreement was?  
21 MR. STERN: I don't think he's asking  
22 you to read and interpret it today.  
23 Q. It's a yes or no.  
24 MR. STERN: Either you do or you don't  
25 from memory.  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 Q. -- transmission as opposed to the  
3 pages that precede it. Compare that with the  
4 rest of the document. They don't have that line  
5 across the top and across the bottom, you see  
6 that?  
7 A. (Witness shrugs.)  
8 Q. Do you recall if you signed a  
9 signature page without the rest of the  
10 agreement?  
11 A. Just as a rule of thumb, I typically  
12 don't sign the signature pages.  
13 Q. If you take a look at the lower  
14 left-hand corner of the signature page, it's got  
15 a document number on there?  
16 A. Uh-huh.  
17 Q. It says -- the number's a little  
18 blurred, but it begins CHI --  
19 A. Uh-huh.  
20 Q. -- 4436673, Version 2, do you see  
21 that?  
22 A. Yes.  
23 Q. Take a look at the two pages that  
24 precede it and look at the lower left-hand  
25 corner. You see that it says Washington, D.C.  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. Yes, vaguely.  
3 Q. Okay.  
4 A. At a high level.  
5 Q. Give me your understanding of what the  
6 purpose of the Transfer and Assumption Agreement  
7 was.  
8 A. That there were some assets that were  
9 going to transfer -- some assets that Lehman  
10 held at one of the exchanges that were going to  
11 be moved over to Barclays.  
12 Q. And the exchange at issue here was the  
13 Options Clearing Corporation, OCC? Do you see  
14 the reference to it in the agreement?  
15 A. Yes, I do.  
16 Q. And the "whereas" clauses of the  
17 agreement in the second one says, "Lehman  
18 maintains clearing fund and margin deposits with  
19 OCC," do you see that?  
20 A. Yes.  
21 Q. Did you have an understanding of what  
22 those two items were when you signed this?  
23 A. No.  
24 Q. Do you know if the transfer --  
25 A. I mean, I know what a clearing fund is  
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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       and I know what a margin deposit is, but I have 3       no idea what the value was at the time. 4       <b>Q. Okay. That's a good point. Apart</b> 5       <b>from what it's worth, apart from the value, I</b> 6       <b>just want to know if you know its character,</b> 7       <b>what they are?</b> 8       A. Yes. 9       <b>Q. And do you know whether either of</b> 10       <b>those, a clearing fund or margin deposits, would</b> 11       <b>contain cash?</b> 12       A. No idea. 13       <b>Q. Do you know --</b> 14       A. I'm sorry, let me answer. I don't 15       know what was contained in it. 16       <b>Q. Uh-huh.</b> 17       A. Most margin deposits or clearing fund 18       deposits could be cash or securities, okay? 19       Most firms use securities. 20       <b>Q. Do you know -- did you know when you</b> 21       <b>signed this agreement whether the clearing fund</b> 22       <b>or margin deposits that it addresses contained</b> 23       <b>cash or securities?</b> 24       A. No idea. 25       <b>Q. If you could turn your attention to</b>           TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       the clarification letter, which I think is 3       Exhibit 25. The clarification letter, 4       Mr. LaRocca, is dated as of September 20. You 5       see that on the face of the document? 6       A. Yes. 7       <b>Q. And the closing took place on Monday,</b> 8       <b>September 22?</b> 9       A. Correct. 10       <b>Q. Do you remember when you signed the</b> 11       <b>clarification document, the clarification</b> 12       <b>letter?</b> 13       A. No. 14       <b>Q. Do you recall signing documents at the</b> 15       <b>actual closing on --</b> 16       A. Monday morning, yes, I do. 17       <b>Q. Do you recall approximately how many</b> 18       <b>documents you signed? I want to know if it was</b> 19       <b>a number greater than one.</b> 20       A. Yes. 21       <b>Q. Was it a dozen documents? One</b> 22       <b>document? Two documents. Any recollection?</b> 23       A. (Witness gestures.) 24       <b>Q. No, you don't know? You got to say it</b> 25       <b>out loud for the reporter.</b>           TSG Reporting - Worldwide (877) 702-9580</p>
Page 128	Page 129
<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       A. No, no recollection. It was more than 3       one. 4       <b>Q. Did you have an understanding when you</b> 5       <b>signed the clarification letter what the purpose</b> 6       <b>of the clarification letter was?</b> 7       MR. STERN: Objection to the form. 8       Do you want to repeat the question? 9       (Record read.) 10       A. I understand, you know, what the word 11       "clarification" means, right? So there 12       obviously had to be -- there was revisions to 13       some earlier agreements. Do I know the -- did 14       at the time or do I recall what the specific 15       points relative to the, you know, that had to be 16       clarified? No. 17       <b>Q. When you say you understood what the</b> 18       <b>word "clarification" means, did you understand</b> 19       <b>the clarification letter to be clarifying terms</b> 20       <b>of the Asset Purchase Agreement?</b> 21       MR. STERN: Objection to the form. 22       A. My -- I just -- the answer is I don't 23       know. I don't know the answer to that, right? 24       So the answer is no, not specifically to the 25       Asset Purchase Agreement.           TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       <b>Q. Did you understand the clarification</b> 3       <b>letter to be --</b> 4       A. I wasn't surprised by a clarification 5       letter given that there was ongoing dialogue 6       through the weekend, right? And specifically as 7       it related to the -- 8       <b>Q. To the repo?</b> 9       A. -- the repo. 10       <b>Q. Before you signed the clarification</b> 11       <b>letter, had you seen any drafts of the</b> 12       <b>clarification letter?</b> 13       A. No. 14       <b>Q. The first version of the clarification</b> 15       <b>letter that you saw was the one that you signed?</b> 16       A. To the best of my knowledge, yes. 17       <b>Q. Did you understand or were you given</b> 18       <b>to understand by someone else that the</b> 19       <b>clarification letter was an amendment as opposed</b> 20       <b>to a clarification?</b> 21       MR. STERN: Objection to the form. 22       A. I'm not sure that I could 23       differentiate with your question. 24       <b>Q. That's good point. One of the things</b> 25       <b>in front of you, although you didn't sign it, is</b>           TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 130</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       a document entitled First Amendment, you see 3       that? 4       A. Yes. 5       Q. First Amendment to Asset Purchase 6       Agreement. And do you have an understanding, in 7       your view, is there a difference between an 8       amendment to an agreement and a clarification 9       letter, a clarification of the agreement? 10      MR. STERN: Objection to the form. 11      Q. I just want your view. 12      A. No. 13      Q. What was your understanding of how the 14      clarification letter addressed the repo? 15      A. Don't recall. Right? You know, my 16      perception at the time, this was all very fluid 17      and evolving over the week's time, right? 18      People moving at -- things needing to happen 19      very fast because the markets are melting down 20      and -- and everyone wanting to effect a 21      transaction to try to save jobs and a Lehman 22      franchise and value for everybody, including 23      the, you know, the piece that was going to go to 24      the estate, right? 25      Q. Also including the piece that was         TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 131</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       going to go to Barclays, right? 3       A. Yeah, absolutely. 4       Q. Did you have an understanding that the 5       clarification letter changed the definition of 6       the assets that were going to be purchased when 7       you signed the clarification letter? 8       A. Not when I signed the clarification 9       letter. Not at the time, okay? Subsequent, you 10      know, we learned that the transaction as 11      originally envisioned in the beginning of the 12      week has changed a lot by the end of the week, 13      right? Again, I can't give you specifics, but, 14      you know, things you think you're buying that 15      don't exist because the quality of the data or 16      the uncertainty. 17      Q. But there came a point where you 18      understand that -- where you came to understand 19      that the clarification letter changed what was 20      purchased? 21      A. Yes. 22      Q. And that point came after, at some 23      point after you signed the clarification letter? 24      A. Yes. 25      Q. Was the fact that the clarification         TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 132</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       letter was changing what was going to be 3       purchased explained to you at the time that you 4       signed the clarification letter? 5       Let me withdraw that. Let me ask a 6       more general question. When you signed the 7       clarification letter, did anybody explain to you 8       what its purpose was in the transaction? 9       A. At a high level that the terms of the 10      transaction had changed. 11      Q. Was it described to you in any greater 12      detail than at that high level, that the terms 13      of the transaction had changed? 14      A. No, not that I can recall. 15      Q. Now, could you turn to paragraph 13 of 16      the -- actually, first, if you don't mind, turn, 17      please, to paragraph 9. 18      A. Of which agreement? 19      Q. Of the clarification letter. Page 4. 20      A. Did you say paragraph 9 or page 9? 21      Q. It's paragraph 9 located on page 4 of 22      the clarification letter. Take a minute and 23      read through that paragraph 9 to yourself, if 24      you don't mind. 25      A. It's only one sentence.         TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 133</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       Q. And it's entitled "Deletion of 3       Purchase Price Adjustment Provisions" and it 4       says, "Section 3.3 of the original agreement is 5       hereby deleted in its entirety and shall be of 6       no effect ab initio." 7       A. No frame of reference at all. 8       Q. Did you have a frame of reference when 9       you signed the agreement for paragraph 9? 10      A. No. 11      Q. And would you take a look at paragraph 12      12, which is on page 5 of the agreement. And 13      I'll read that into the record: It's entitled 14      "Schedule 12.3," underscored, and it says, 15      "Following the closing, the parties shall 16      reasonably agree to an allocation of the 17      purchase price (including the assumed 18      liabilities) among the purchased assets for tax 19      purposes and set forth such allocation on a 20      Schedule 12.3 to be signed by the parties." Do 21      you see that? 22      A. Yes. 23      Q. Do you know whether any such schedule 24      has ever been prepared? 25      A. I have no idea.         TSG Reporting - Worldwide (877) 702-9580</p>

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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **Q.** And would you take a look now at the  
3 paragraph that follows, paragraph 13. I'm not  
4 going to read it into the record because it's  
5 too long, but read through it yourself and let  
6 me know when you've had a chance to do that.  
7       **(Document review.)**  
8       **A.** Okay. I've read it.  
9       **Q.** Now, when you signed the clarification  
10 letter, did you have an understanding of the  
11 purpose of paragraph 13?  
12       **A.** Don't recall.  
13       **Q.** When you signed the clarification  
14 letter, had you seen a copy of the Notice of  
15 Termination that's referred to in the last  
16 sentence of paragraph 13?  
17       **A.** I don't believe so.  
18       **Q.** Did you have an understanding that a  
19 Notice of Termination relating to the Barclays  
20 Repurchase Agreement had been issued?  
21       **A.** No. I had an understanding that the  
22 repo would terminate, but didn't know if the  
23 notice -- didn't understand the formal process  
24 of how that takes place.  
25       **Q.** Did you have an understanding as to  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 27, and I'll ask you, sir, if you've seen that  
3 document -- actually, this is the Notice of  
4 Termination referred to and you told me you  
5 didn't remember if you saw it.  
6       **Does this refresh your recollection?**  
7       **A.** No, not at all.  
8       **Q.** Do you know the Michael Montgomery who  
9 signed this?  
10       **A.** Yes. Yes.  
11       **Q.** Who is Michael Montgomery?  
12       **A.** Michael Montgomery is a director with  
13 Barclays Capital. He was formerly the CFO of  
14 Barclays Capital of the Americas, and because of  
15 his previous role, he was on the board of  
16 Barclays Capital, Inc., still remains on the  
17 board of Barclays Capital, Inc., and is why he's  
18 a signator.  
19       But at the time of this transaction,  
20 Mike's role would have been to be the BarCap  
21 person on the ground responsible for overseeing  
22 our investments in Homeq and Equifirst.  
23       **Q.** Did the investments in Homeq or  
24 Equifirst have any relation to the --  
25       **A.** None whatsoever.  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 whether paragraph 13 was meant to address the  
3 bankruptcy implications we talked about before  
4 when there's a default on a repo and a  
5 bankruptcy is involved?  
6       **A.** No.  
7       **Q.** No, you did not?  
8       **A.** No, I did not.  
9       **Q.** Do you recall if anyone explained to  
10 you, even if you don't remember the content of  
11 it -- actually, just answer this yes or no: Do  
12 you recall whether anyone explained to you the  
13 implications under the Bankruptcy Code of  
14 paragraph 13?  
15       **A.** "No" to your question.  
16       **Q.** Okay. We talked before about getting  
17 an explanation of the implications of the  
18 Bankruptcy Code for the termination of the repo?  
19       **A.** Yes.  
20       **Q.** Yours is a good point. Specifically  
21 with respect to paragraph 13, did you get that  
22 kind of explanation?  
23       **A.** No.  
24       **Q.** I'm putting before you, Mr. LaRocca, a  
25 document that was previously marked as Exhibit  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       **Q.** Let me put the whole question so we  
3 have a clear question and answer.  
4       **Do the investments in Homeq or**  
5 **Equifirst have any relation to the Repurchase**  
6 **Agreement we have talked about?**  
7       **A.** None whatsoever.  
8       **Q.** Do you have any knowledge as to why it  
9 would be Michael Montgomery signing this other  
10 than the fact that he holds that title?  
11       **A.** No, I presume it's only because they  
12 were looking for a signator.  
13       **Q.** Do you know who's the "they"?  
14       **A.** Alan Kaplan. It probably would have  
15 been Alan Kaplan or someone within Barclays  
16 Capital Legal was looking for a BCI signator.  
17       **Q.** Without regard to the documents, and  
18 I'll go back to them in a minute, but without  
19 regard to the documents, was there a point in  
20 the time sequence from the morning of the 19th  
21 through to the closing on the 22nd where the  
22 fact that a Notice of Termination of the repo  
23 had been sent came to your attention?  
24       **A.** No.  
25       **Q.** Was the fact of a Notice of  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **Termination being sent a topic of any**  
3 **conversation in which you were involved at any**  
4 **time?**

5 A. No, not that I'm aware of. Not that I  
6 recall.

7 Q. When you signed the agreement, did you  
8 have any understanding of why the Notice of  
9 Termination needed to be rescinded and void ab  
10 initio in all respects?

11 A. I didn't sign the agreement.

12 Q. I'm in the clarification letter at  
13 paragraph 13 again.

14 A. No.

15 Q. Over the weekend of the 20th and the  
16 21st and through the closing on the morning of  
17 the 22nd, that's the time I'm talking about now,  
18 during that period did you have discussions with  
19 anyone as to whether the terms of the  
20 clarification letter had been approved by the  
21 bankruptcy court?

22 A. No.

23 Q. With respect to both the Asset  
24 Purchase Agreement, the one dated the 16th, the  
25 Tuesday, and the clarification letter, dated as  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 know, I couldn't tell you the amounts associated  
3 with those, but knew that Barclays was going to  
4 assume some liabilities.

5 Q. But beyond knowing the fact of an  
6 assumption of liabilities, you did not know the  
7 amounts, correct?

8 A. No, wouldn't have been privy to it,  
9 wouldn't have been involved in that aspect of  
10 it.

11 Q. If you could go back to Exhibit 1,  
12 sir, the Asset Purchase Agreement, and turn,  
13 please, to page 35.

14 A. Did you say page 35?

15 Q. Yes, sir. And the paragraph I'm  
16 talking about is paragraph 9.1(C), which is at  
17 the top of page 35. If you could read through  
18 that just sufficiently to tell us whether you've  
19 seen or focused on that language before?

20 A. No.

21 Q. Do you see that it refers to a --  
22 actually, let me read the portion I'm interested  
23 in. In paragraph 9.1(C) it refers to a  
24 financial schedule delivered to purchaser on  
25 September 16, 2008, and initialed by an officer

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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **of the 20th, did you have an understanding, sir,**  
3 **of the amount -- did you have an understanding**  
4 **that Barclays would be assuming certain**  
5 **liabilities as part of its consideration in the**  
6 **deal?**

7 MR. STERN: Objection to the form.

8 A. Could you rephrase the question?

9 Q. As part of the transaction, did you  
10 understand Barclays would be assuming  
11 liabilities?

12 A. Yes.

13 Q. What liabilities did you understand  
14 Barclays would be assuming?

15 A. I don't have a detailed understanding  
16 or I don't recall being privy to, you know, a  
17 detailed listing of all the liabilities that  
18 Barclays would assume, right? As a result of  
19 being in the area, right, you know, there was  
20 going to be severance packages that would need  
21 to be paid to Lehman employees, there would be  
22 compensation that would need to be paid to  
23 Lehman employees that we would retain, right?  
24 There would be cure payments that would have to  
25 go to third parties. You know, that's, you  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 **of each of Holdings and purchaser. You see**  
3 **that?**

4 A. Yes.

5 Q. Did you ever see that schedule?

6 A. No.

7 Q. Let me show you what's previously been  
8 marked as Deposition Exhibit 19 and ask you if  
9 you've ever seen that document before?

10 A. No, I have not.

11 Q. Down the asset side of that financial  
12 schedule are certain classes of collateral and  
13 numbers attributed to those assets, correct?

14 A. Uh-huh.

15 Q. When you were around -- you and I both  
16 have used different phrases to this today. When  
17 you were around and picked up the buzz of what  
18 was going on or you were nearby to what was  
19 going on, did you come to any understanding as  
20 to whether those amounts were negotiated with  
21 between Barclays and Lehman?

22 A. No, I -- no idea at all.

23 Q. Did you ever --

24 A. Being around, I had a high level. I  
25 knew that the size of the transaction had

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 shrunk.  
3 Q. Okay.  
4 A. Other than that ...  
5 Q. When you say "the size," you're  
6 talking about over the week?  
7 A. Over the week.  
8 Q. From the Tuesday to the Friday, right?  
9 A. Yeah.  
10 Q. Did you have any understanding as to  
11 whether the price that Barclays paid for those  
12 asset classes constituted a contract price that  
13 was different from the amounts shown on Lehman's  
14 books for those asset classes?  
15 A. No idea at all.  
16 Q. Did you have any understanding that  
17 the \$2.0 billion number attributed to comp on  
18 the liability side was also a negotiated amount?  
19 A. No, I did not.  
20 Q. Why were you the guy to sign these  
21 agreements?  
22 A. I'm the signator for Barclays Capital,  
23 Inc.  
24 Q. Is Rich Ricci a signator for Barclays  
25 Capital, Inc.?  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 identification, as of this date.)  
3 Q. What I need you to look through on  
4 Exhibit 208 -- well, look through the document  
5 enough to tell me whether you've seen it before,  
6 but in particular, Mr. LaRocca, I'm going to  
7 have questions for you about the first couple of  
8 pages running from BCI-00619 through 6121.  
9 A. I'm sorry, can you repeat that?  
10 Q. The first few -- Bates Nos. BCI000619,  
11 which is the first page of the document, through  
12 6121, which is the third page of the document,  
13 front and back. And you'll see that the cover  
14 is an e-mail from Robert Azerad at Lehman --  
15 A. Yes.  
16 Q. -- to you, entitled "Detailed  
17 information about the 1.9 billion of  
18 unencumbered collateral."  
19 Do you recall receiving this document?  
20 A. No.  
21 Q. We talked a little earlier about what  
22 you would do if you got a document with a  
23 schedule like this.  
24 A. A lot of the Lehman guys -- I was in  
25 Ops. I explained my role in terms of trying to  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 A. I don't know the answer to that.  
3 Q. What about Bob Diamond, is he a  
4 signatory for Barclays Capital, Inc.?  
5 A. I don't believe so. I don't know what  
6 his role as chief executive of Barclays Capital.  
7 I presume that entitles him to -- maybe, I don't  
8 know, I don't know if that entitles him to sign  
9 any document in the firm, but he's, you know,  
10 he's not an officer of Barclays Capital, Inc.  
11 nor on the board of BCI, right, the U.S.  
12 broker-dealer.  
13 Q. Okay. You see why I'm asking. Are  
14 there other officers around who could have  
15 signed instead of you?  
16 A. I'm the chief executive of the U.S.  
17 broker-dealer, so I'm the likely -- Mike  
18 Montgomery, obviously he's an officer of BCI. I  
19 didn't even realize he was in New York that  
20 week. Maybe he was, maybe he wasn't.  
21 Q. He might not have been. Washington  
22 and Chicago are at the bottom of the document.  
23 A. Okay.  
24 (Exhibit 208, a document bearing Bates  
25 Nos. BCI 006119 through 6646, marked for  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 be helpful. And a lot of the Lehman employees,  
3 maybe they presumed I was part of the deal team  
4 and trying to give me docs and information and  
5 the -- you know, this document, I don't even  
6 recall what I would have done with it.  
7 Q. Okay.  
8 A. Actually, if I look below, it looks  
9 like it was sent to Rich Ricci below me, right,  
10 and then subsequently shared with me. I  
11 wouldn't have done a -- I might have filed it  
12 under G.  
13 Q. Okay.  
14 A. You know what G stands for?  
15 Q. The e-mail at the bottom is from  
16 Azerad to Ricci?  
17 A. Yeah.  
18 Q. And then there's some CCs, Tonucci,  
19 Lowitt and Kelly?  
20 A. Those are all Lehman employees.  
21 Q. And then the top is Azerad himself.  
22 This isn't being forwarded by Ricci to you.  
23 This is from Azerad.  
24 A. I'm saying I would have seen that it  
25 was sent to Rich.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q. And therefore, you don't have to do**  
3 **anything with it; it's where it needs to be?**  
4       A. I don't know why it was being sent to  
5 Rich or why it's not being sent to Rich. Rich  
6 wouldn't know what to do with a document like  
7 this.  
8       **Q. Do you have an understanding of what's**  
9 **meant by "1.9 billion of unencumbered**  
10 **collateral"?**  
11       A. I understand what the term  
12 "unencumbered" means, right? Which means --  
13 right?  
14       **Q. I'm asking a slightly more specific**  
15 **question. In the context of the deal, was there**  
16 **an issue --**  
17       A. No.  
18       **Q. -- concerning 1.9 billion of**  
19 **unencumbered collateral that you know about?**  
20       A. Not that I knew about.  
21       I can tell you --  
22       **Q. What did you want to tell me about the**  
23 **document?**  
24       A. What I was going to do would be  
25 critical of the document in terms of, since  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 **now. Do you know one way or the other whether**  
3 **the description of 1.9 billion in unencumbered**  
4 **assets in that exhibit is accurate or not?**  
5       A. I do not know.  
6       **Q. Could you go back to the clarification**  
7 **letter, please, Exhibit 25, and I would direct**  
8 **your attention to the first page of it,**  
9 **paragraph 1, entitled "Purchased Assets;**  
10 **Excluded Assets," and in particular, paragraph**  
11 **1(A)(ii), which begins "with respect to causes**  
12 **(a), (d) and (e)."**  
13       A. I'm sorry.  
14       **Q. It's that paragraph there, Roman**  
15 **numeral ii.**  
16       (Document review.)  
17       **Q. Okay. Have you had a chance to read**  
18 **that through?**  
19       A. Uh-huh.  
20       **Q. Section capital A of that paragraph**  
21 **refers to "the securities owned by LBI and**  
22 **transferred to purchaser or its affiliates under**  
23 **the Barclays Repurchase Agreement (as defined**  
24 **below) as specified on Schedule A previously**  
25 **delivered by seller and accepted by purchaser."**  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Lehman hadn't been able to settle trades,  
3 reconcile its positions in bank accounts for  
4 several days, I don't think they would be in a  
5 position to definitively know what was in the  
6 box, let alone whether it was unencumbered or  
7 not.  
8       **Q. That's based on your impression going**  
9 **back to even the week before --**  
10       A. Absolutely.  
11       **Q. -- about the state of the records?**  
12       A. The state of recordkeeping was  
13 horrific.  
14       **Q. Beyond that impression, based on an**  
15 **overall view of the state of their**  
16 **recordkeeping, do you have any knowledge about**  
17 **whether Lehman could accurately describe 1.9**  
18 **billion as unencumbered, about 1.9 billion?**  
19       A. I'm sorry, could you just repeat? Do  
20 I have an impression?  
21       **Q. Let me rephrase the question.**  
22       MR. STERN: He's asking if you know.  
23       **Q. Your answer to me has been based on**  
24 **your overall impression of Lehman's**  
25 **recordkeeping. My question is more specific**  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2 **Do you see that piece?**  
3       A. Yes.  
4       **Q. At the time you signed the**  
5 **clarification letter, had you seen that Schedule**  
6 **A to which that portion refers?**  
7       A. I don't recall. I don't recall.  
8       **Q. In the next section it refers to,**  
9 **"Such securities and other assets held in LBI's**  
10 **'clearance boxes' as of the time of the Closing,**  
11 **which at the close of business on September 21,**  
12 **2008 were as specified on Schedule B previously**  
13 **delivered by seller and accepted by purchaser."**  
14       A. I don't recall receiving that.  
15       **Q. Schedule B?**  
16       A. Yes.  
17       **Q. And if you would turn to page 2 and go**  
18 **to section capital C within that paragraph,**  
19 **which says, "Exchange-traded derivatives (and**  
20 **any property that may be held to secure**  
21 **obligations under such derivatives) and**  
22 **collateralized short-term agreements."**  
23       Do you have an understanding of what  
24 that was describing?  
25       A. No.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** Let me ask you to back up to page 1  
3 again. The reference to clearance boxes and the  
4 description, "at the close of business on  
5 September 21, 2008, were as specified on  
6 Schedule B," does that refresh your recollection  
7 as to whether the clarification letter was  
8 signed on the Monday?  
9       A. No.  
10       (Exhibit 209, a document bearing Bates  
11 Nos. BCI-EX-00079307 through 79309, marked  
12 for identification, as of this date.)  
13       **Q.** I have put before you, Mr. LaRocca,  
14 what we have marked as Deposition Exhibit 209, a  
15 three-page document bearing Bates Nos.  
16 BCI-EX-00079307 through 79309.  
17       Take a look through it, please,  
18 sufficiently to tell me whether you recall  
19 seeing this e-mail chain before.  
20       A. I don't recall receiving it.  
21       **Q.** Okay. Could you take a minute -- what  
22 I recommend is read it from earlier to the more  
23 recent. So if you start at the back and read  
24 up, that would be helpful.  
25       (Document review.)  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** Okay. Now, through the e-mail there's  
3 some back and forth about that issue, and at the  
4 very top it's an e-mail from Rich Ricci to  
5 Patrick Clackson with a copy to you, and the  
6 text of Mr. Ricci's e-mail is, "Gerard, any  
7 view?"  
8       Do you recall getting an inquiry  
9 either by this e-mail or otherwise from  
10 Mr. Ricci about the \$1.9 billion?  
11       A. No.  
12       **Q.** Do you know if you ever responded to  
13 this?  
14       A. I don't believe I ever responded. I  
15 could tell you how I would respond today.  
16       **Q.** Okay.  
17       A. All right? I mean, this is consistent  
18 with my comments about the shoddy recordkeeping  
19 and not knowing what assets are where. And you  
20 can see the questions. They don't even know  
21 if -- what's in the 44 billion.  
22       So had I spoken to Rich about it, I  
23 would have said, you know, I'm putting -- you  
24 can't rely on any of the information that you  
25 have been given, you know?  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** Okay. Have you had a chance to read  
3 through the e-mail chain?  
4       A. Yes.  
5       **Q.** And you see generally, sir, this  
6 refers -- it's an e-mail entitled "Updated  
7 Opening Balance Sheet" and there's a discussion  
8 within the various sections of the e-mail about  
9 an -- well, withdrawn. Take that question out  
10 and shoot it. Let me start again.  
11       Let's go to the earliest e-mail, which  
12 is from Gary Romain to Martin Kelly, copy James  
13 Walker and it says, "Martin, a basic question,  
14 but want to make sure I'm understanding this  
15 summary. Will the \$44,880 correspond to what  
16 came across against repo - you mentioned an  
17 additional \$1.9 billion of assets (separate to  
18 the 15c3), which is included/excluded in this  
19 number ...?" Do you see that?  
20       A. Yes.  
21       **Q.** Do you know what that e-mail exchange  
22 is about?  
23       A. No.  
24       **Q.** Did you know at the time?  
25       A. No.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** Do you have an understanding of why  
3 Mr. Ricci would be asking you, in particular, if  
4 you had a view about the issues discussed in  
5 this e-mail chain?  
6       A. No. No.  
7       (Exhibit 210, a document bearing Bates  
8 Nos. BCI-EX-00082420 through 82422, marked  
9 for identification, as of this date.)  
10       **Q.** What I have put before you marked as  
11 Deposition Exhibit 210, Mr. LaRocca, is a  
12 three-page document consisting of an e-mail  
13 chain and it bears Bates No. BCI-EX-000082420  
14 through 422.  
15       Same request. Take a look through it  
16 sufficient to tell me whether you've seen it  
17 before.  
18       (Document review.)  
19       MR. STERN: You'll have to take some  
20 time reading this because there's a number  
21 of long messages.  
22       A. I recall all of these e-mails, you  
23 know, because this is related to the Fed  
24 replacement repo.  
25       **Q.** It contains the names of people that  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       you have spoken about today, Lucinda Brickler,  
3       Stephanie Heller.  
4       And the top e-mail, the one most  
5       recent in time, is from Stephanie Heller to you  
6       dated September 25 at 7:59 P.M., copy Hughes,  
7       Brickler, Shari Leventhal with the Fed, entitled  
8       what I'm sure you agree is probably the wrong  
9       title for thing: "One last question," right?  
10      In the first paragraph of the e-mail,  
11      Ms. Heller -- and I'm paraphrasing this,  
12      obviously -- seems to be telling you that there  
13      are two \$7 billion issues between Barclays and  
14      Chase?  
15      A. Right.  
16      Q. Tell me what you understand about  
17      there being two 7 billion dollar issues?  
18      A. I recall receiving the e-mail and I  
19      was floored. I had no, you know, you know, my  
20      response to Stephanie at the time we spoke is  
21      this is -- I got to pick my words carefully.  
22      Q. Another colorful response?  
23      A. Another colorful response.  
24      I don't know what they're talking  
25      about. I don't know anything about -- all I  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       we briefly discussed off the record, I'm  
3       marking as Exhibit 211 -- and I'll just show  
4       it to you, Jack, I'll give you your own copy  
5       as well -- a letter dated August 18, 2009,  
6       to me from Chris Green at Boies Schiller,  
7       and it's the cover letter that came last  
8       night with a collection of, I don't know,  
9       three or four disks.  
10      And Chris tells me that Gerard LaRocca  
11      documents are covering the range  
12      BCI-EX-(S)-00033492 through 34981, and it's  
13      about a thousand pages of document. I tried  
14      to take a look at it quickly over the break  
15      but haven't been able to sort it out, so for  
16      that reason, we're going to -- I have no  
17      further questions at this time, but I'm  
18      going to reserve the right to bring  
19      Mr. LaRocca back if we need to follow up on  
20      any documents in there.  
21      And I should just say so we have  
22      clarity on the record, I know everybody is  
23      working very hard in August, I'm not  
24      suggesting that there's anything wrong or  
25      insidious in getting the disk yesterday. I  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       know is about the Fed replacement transaction,  
3       so I would have gone back to her aggressively,  
4       colorfully, you know, and I thought this was the  
5       Fed doing a rope-a-dope -- I'm sorry, JPMorgan  
6       doing a rope-a-dope with the Fed. I still to  
7       this day don't know what confusion related to  
8       another transaction.  
9       Q. Did you ever get any more knowledge  
10      than this --  
11      A. No, I don't recall.  
12      Q. Let me put a full question so we have  
13      a good record.  
14      Did you ever gain any more knowledge  
15      than is contained in this e-mail about a second  
16      \$7 billion issue with Chase apart from the  
17      replacement transaction?  
18      A. No.  
19      MR. GAFFEY: Let's go off the record  
20      for a second.  
21      (Discussion off the record.)  
22      (Exhibit 211, a letter from C. Green  
23      to R. Gaffey dated August 18, 2009, marked  
24      for identification, as of this date.)  
25      MR. GAFFEY: Just to follow up on what  
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1       **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2       know everybody's a little bit pressed this  
3       month, but it's just a question of not  
4       having been able to look through them.  
5       MR. WOOD: I think we got them this  
6       morning sometime, and obviously since this  
7       deposition is not taking place at our  
8       office, I have not had a chance to see any  
9       of them.  
10      MR. GAFFEY: And with that, I don't  
11      have anything.  
12      (Discussion off the record.)  
13      (Recess; Time Noted: 1:56 P.M.)  
14      (Time Noted: 2:00 P.M.)  
15      EXAMINATION BY  
16      MR. WOOD:  
17      Q. Again, Mr. LaRocca, I'm John Wood from  
18      Hughes, Hubbard & Reed. We represent the  
19      trustee under SIPA.  
20      You were saying earlier in response to  
21      some of Mr. Gaffey's questions that you were  
22      aware on or about the 19th that Barclays was  
23      looking to get additional assets beyond the repo  
24      securities as part of the deal?  
25      A. Correct.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** Is that right? Do you recall any  
3       conversations where particular amounts were  
4       discussed?  
5       A. No.  
6       **Q.** Dollar figures, anything like that?  
7       A. No.  
8       **Q.** Can you just take another look at  
9       Exhibit 209, which we went through earlier.  
10       And we went through it earlier. There  
11       are several references in there to 1.9, \$1.9  
12       billion. Do you recall any discussions on or  
13       about the 19th of Barclays seeking an additional  
14       \$1.9 billion in assets?  
15       A. I wouldn't have been involved in any  
16       discussions. I'll answer the question the same  
17       as Mr. -- I answered Mr. Gaffey. I was aware of  
18       those discussions going on, but I wouldn't have  
19       been privy or involved in those discussions.  
20       **Q.** Then towards the top of the first page  
21       there where Mr. Clackson writes to you, "Not  
22       looking good for the \$1.9 billion," what do you  
23       understand that to mean?  
24       A. He wrote Rich Ricci.  
25       **Q.** I'm sorry, he wrote Rich Ricci, who  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       **Q.** What do you understand that to mean  
3       now?  
4       MR. STERN: And I'm going to instruct  
5       you not to answer based on conversations  
6       you've had with counsel.  
7       THE WITNESS: Okay.  
8       MR. STERN: Which means you can  
9       testify to any understanding you got other  
10       than through conversations with counsel, if  
11       any.  
12       A. Today as I sit before you my  
13       understanding is that Barclays, in addition to  
14       the assets it came across, the repo was looking  
15       for other assets from Lehman Brothers, one of  
16       which is some securities held in the box, that  
17       certain e-mails suggest has a value or an amount  
18       of 1.9. That's what I know now.  
19       But I wouldn't have been involved in  
20       the deal or the aspects about the inclusion or  
21       exclusion of this element of the assets that  
22       were coming across from Lehman Brothers. My  
23       responsibility was limited to the, you know -- I  
24       don't want to say "limited" -- primarily focused  
25       on the Fed replacement transaction.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       then subsequently forwarded it to you. Thank  
3       you for clarifying that.  
4       What do you understand Mr. Clackson to  
5       refer to there?  
6       A. Just don't have -- I don't know.  
7       Don't know.  
8       I guess a clarifying question for you,  
9       right? At the time, I didn't know. Right?  
10       Obviously a year later, right, you guys are  
11       talking about an unencumbered box. So I don't  
12       know how you differentiate kind of what I knew  
13       at the time, which I didn't know anything, or  
14       much, related to this, and what I know now or  
15       have been able to derive from the question and  
16       the information you showed me here at the  
17       deposition.  
18       **Q.** So just to make sure I understand, at  
19       the time you would not --  
20       A. So I wouldn't have been able --  
21       **Q.** -- at the time you not only would not  
22       have been involved, you wouldn't have understood  
23       what he meant by the 1.9, "Not looking good for  
24       the \$1.9 billion"?  
25       A. Correct.  
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1       HIGHLY CONFIDENTIAL - G. LaROCCA  
2       MR. STERN: I guess I just want to  
3       make a statement on the record. I'm  
4       concerned about confusion as between  
5       information that Mr. LaRocca had at the time  
6       of the transaction and what he's testifying  
7       to based on what he's read today.  
8       So I'm just concerned about that, and  
9       in asking your questions, I just ask that  
10       you guard against that confusion. And I've  
11       asked the witness to do the same.  
12       THE WITNESS: Yes. Okay.  
13       **Q.** Based on what you know today -- you  
14       might want to keep that document in front of  
15       you, by the way. Based on what you know today,  
16       do you have an understanding of why, as of  
17       Monday, September 22, at 5:46 P.M., it was not  
18       looking good?  
19       A. No idea. Not at all.  
20       **Q.** Turning your attention back to Exhibit  
21       25, which we've been referring to as the  
22       clarification letter.  
23       A. Uh-huh.  
24       **Q.** At the bottom of that first page,  
25       there's reference to Schedule B that Mr. Gaffey  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 asked you about?  
3 A. Uh-huh.  
4 Q. And I think you testified that you  
5 never saw Schedule B?  
6 A. I don't recall.  
7 Q. Do you have any idea who at Barclays  
8 would have been responsible for preparing  
9 Schedule B?  
10 MR. STERN: Barclays?  
11 I'm going to object to the form.  
12 You're suggesting Barclays prepared Schedule  
13 B?  
14 MR. WOOD: I'll clarify that.  
15 Q. Do you know who at Barclays would have  
16 been involved in reviewing Schedule B?  
17 A. No idea.  
18 MR. STERN: Objection to the form.  
19 Q. I'm handing you what's already been  
20 marked as Exhibit 52, which is a letter dated  
21 September 22, 2008.  
22 And for the record, at the top on the  
23 letterhead it says the Depository Trust &  
24 Clearing Corporation. So I'll probably just  
25 refer to this as the DTCC letter.  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 Q. Do you recall whether you read the  
3 document before you signed it?  
4 A. Don't recall if I read the document,  
5 but as I indicated, I do recall that, as part of  
6 the agreement of the -- as part of our  
7 acquisition, there needed to be a payment made  
8 to DTC.  
9 Q. Do you remember who told that you?  
10 A. Might have been our in-house counsel,  
11 but not certain.  
12 Q. Do you recall whether anybody  
13 explained to you the terms of this letter before  
14 you signed it?  
15 A. I'm fairly certain our internal legal  
16 team would have explained this letter to me.  
17 Q. Do you recall when you first learned  
18 of the need to have a DTCC letter, as I'm  
19 referring to it?  
20 MR. STERN: Objection to the form.  
21 A. Don't recall specifically when. I  
22 don't recall.  
23 Q. If you'll look at page 2 of this  
24 letter, near the top of the page you'll see  
25 number 1, "Winding Down of Accounts"?  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 MR. STERN: Well, take a look at it.  
3 MR. WOOD: Yeah, take your time.  
4 MR. STERN: Take time to review it.  
5 (Document review.)  
6 Q. Ready?  
7 A. Yes.  
8 Q. If you look at the last page, is that  
9 your signature on the document?  
10 A. Yes, it is.  
11 Q. Do you remember signing it?  
12 A. Do I remember signing this document?  
13 No. No.  
14 Q. It's dated September 22?  
15 A. Yeah.  
16 Q. Do you have any recollection of  
17 whether this was among the group of documents  
18 that you signed that day?  
19 A. I have a recollection of a payment  
20 needing to be made to DTCC as part of the  
21 agreement with the, you know, and the \$250  
22 million wire transfer seems to resonate with me.  
23 I remember at the closing there was a payment  
24 that had to be made to DTC. That's my  
25 recollection.  
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1 **HIGHLY CONFIDENTIAL - G. LaROCCA**  
2 A. Yeah.  
3 Q. And the first sentence there says,  
4 "Barclays has indicated and hereby agrees that  
5 all of the accounts of LBI maintained at the  
6 clearing agency's subsidiaries (the accounts)  
7 constitute 'excluded assets' within the meaning  
8 of the APA."  
9 MR. STERN: Is there a question?  
10 MR. WOOD: I thought the witness was  
11 reading, so I wanted to pause to give him a  
12 moment to read it.  
13 (Document review.)  
14 A. Yes.  
15 Q. Do you recall that language?  
16 A. No.  
17 Q. As you sit here today what is your  
18 understanding of that?  
19 MR. STERN: Objection to the form.  
20 A. I'm not really sure.  
21 Q. Do you recall whether you were on a  
22 telephone call with anyone from DTC on Sunday  
23 night, September 21st?  
24 A. I don't recall being on a telephone  
25 call with DTC on a Sunday.  
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<p style="text-align: right;">Page 166</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       <b>Q. And just in case this refreshes your</b></p> <p>3       <b>recollection, our understanding is there was a</b></p> <p>4       <b>telephone call involving Isaac Montel of DTC.</b></p> <p>5       <b>Does that ring a bell?</b></p> <p>6       MR. STERN: Objection to the form.</p> <p>7       A. Yes, it actually does ring a bell.</p> <p>8       <b>Q. Just to be clear, the -- you remember</b></p> <p>9       <b>the call or just remember the name of the</b></p> <p>10       <b>individual?</b></p> <p>11       A. I remember a call with DTCC that</p> <p>12       weekend, couldn't tell you if it was Saturday or</p> <p>13       Sunday, with seemed like -- I seem to recall</p> <p>14       that Isaac Montel was on the call.</p> <p>15       <b>Q. Do you recall participating in the</b></p> <p>16       <b>call? By that I mean speaking?</b></p> <p>17       A. No. No, I don't think I spoke.</p> <p>18       <b>Q. Do you remember what the purpose of</b></p> <p>19       <b>the call was?</b></p> <p>20       A. I believe DTC wanted Barclays to step</p> <p>21       into Lehman's obligations at the Depository.</p> <p>22       <b>Q. And what do you mean by "step into the</b></p> <p>23       <b>obligations"?</b></p> <p>24       A. Assume, assume the obligations of</p> <p>25       Lehman Brothers.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 167</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       <b>Q. And do you remember whether anyone</b></p> <p>3       <b>from Barclays said whether or not Barclays would</b></p> <p>4       <b>do so?</b></p> <p>5       A. I think we were all apprehensive about</p> <p>6       stepping into Lehman obligations and all the</p> <p>7       uncertainty associated with it.</p> <p>8       <b>Q. Do you remember whether anybody from</b></p> <p>9       <b>DTC expressed any apprehensions?</b></p> <p>10       MR. STERN: Objection to the form.</p> <p>11       A. About?</p> <p>12       <b>Q. About the arrangement.</b></p> <p>13       MR. STERN: Objection to the form.</p> <p>14       A. Don't recall.</p> <p>15       <b>Q. Do you recall any discussion about</b></p> <p>16       <b>whether residential mortgage securities would be</b></p> <p>17       <b>included in the assets that would be given to</b></p> <p>18       <b>DTC?</b></p> <p>19       A. Vaguely.</p> <p>20       <b>Q. I'll ask a different question.</b></p> <p>21       A. Vaguely. Yes.</p> <p>22       <b>Q. Do you remember whether on that call</b></p> <p>23       <b>that we're discussing, whether anyone from DTC</b></p> <p>24       <b>expressed concern that residential mortgage</b></p> <p>25       <b>securities would not be included among the</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 168</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       <b>securities they would have access to?</b></p> <p>3       A. Just don't recall.</p> <p>4       <b>Q. Again, looking at this Exhibit 52,</b></p> <p>5       <b>which is on the letterhead of the Depository</b></p> <p>6       <b>Trust &amp; Clearing Corporation, do you know who</b></p> <p>7       <b>drafted that letter?</b></p> <p>8       A. No idea. No idea.</p> <p>9       (Exhibit 212, an e-mail string, the</p> <p>10       first one in time from N. Reyda to ITD War</p> <p>11       Room, dated September 19, 2008, marked for</p> <p>12       identification, as of this date.)</p> <p>13       <b>Q. Take a moment to read that over.</b></p> <p>14       <b>(Document review.)</b></p> <p>15       (Exhibit 213, an e-mail string, the</p> <p>16       first in time from G. LaRocca to A.</p> <p>17       Blackwell, dated September 20, 2008, marked</p> <p>18       for identification, as of this date.)</p> <p>19       <b>Q. And I'm actually going to ask you</b></p> <p>20       <b>first about number 213. The reason I want to</b></p> <p>21       <b>make sure you had 212 is you'll see at the</b></p> <p>22       <b>bottom of 213 it says "original message</b></p> <p>23       <b>truncated," so 212 gives you some context.</b></p> <p>24       A. 213 is in front of me. I've read it.</p> <p>25       <b>Q. So I'm looking at 213. The second</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 169</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       <b>message from the top is the one that you wrote</b></p> <p>3       <b>on September 20th at 9:07 P.M.?</b></p> <p>4       A. Yes, I remember this.</p> <p>5       <b>Q. Subject is "The Conversion," and you</b></p> <p>6       <b>write, "Deal team wants to see Lehman produce</b></p> <p>7       <b>some credible books and records which will</b></p> <p>8       <b>provide valuable information about Lehman's</b></p> <p>9       <b>inventory which remain in the box on Friday and</b></p> <p>10       <b>also the securities/assets that Lehman's</b></p> <p>11       <b>believed to have been seized," and then four</b></p> <p>12       <b>question marks.</b></p> <p>13       MR. STERN: Do you know where he is?</p> <p>14       THE WITNESS: I do now. I was</p> <p>15       starting below.</p> <p>16       <b>Q. Take a second to read it.</b></p> <p>17       A. Okay.</p> <p>18       <b>Q. What are the assets Lehman believed to</b></p> <p>19       <b>have been seized?</b></p> <p>20       A. I don't know the answer to that</p> <p>21       question. At this point in time, I remember</p> <p>22       these two e-mails very clearly, right? The</p> <p>23       Lehman team making representations that there</p> <p>24       were assets, right, but producing no credible</p> <p>25       evidence, right, you know, and me telling them,</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 you know, show me something, don't just tell me  
3 that JPMorgan seized assets.  
4 So they made references that JPMorgan  
5 seized assets, they had an unencumbered box, you  
6 know, but they couldn't produce records because  
7 they were -- hadn't been able to reconcile books  
8 and records and do a close for days, right?  
9 Q. So to --  
10 MR. STERN: Have you finished your  
11 answer?  
12 Q. Oh, sorry.  
13 A. Yes.  
14 Q. Moving to the earlier part of that  
15 sentence, so setting aside now these seized  
16 assets, the reference to "inventory which remain  
17 in the box," so as of that Saturday night, did  
18 you still feel uncertainty as to what was in  
19 the box?  
20 A. To this day I don't know what was in  
21 the box. A year later. I have no frame of  
22 reference.  
23 Q. Did you get any additional  
24 information?  
25 A. No, not that I'm aware of.  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 on the "to" line, and subject is "Important -  
3 Lehman/Barclays Capital Integration Update -  
4 7:30 A.M. Call."  
5 Do you remember whether you were on  
6 that call?  
7 A. I don't remember. I don't believe I  
8 was.  
9 Q. If you look at the attachment there --  
10 A. No familiarity at all.  
11 Q. Looking at number 1 where it says,  
12 "Reviewing TBA risk in DTC box, do you remember  
13 that?  
14 A. Not at all.  
15 Q. Do you know what "TBA" refers to?  
16 A. Yes.  
17 Q. What?  
18 A. "To be announced" is the acronym.  
19 It's associated with mortgage pools.  
20 Q. Mr. LaRocca, do you remember whether  
21 any assets were transferred from the clearance  
22 box on Friday, September 19th?  
23 A. Wouldn't -- don't remember.  
24 Wouldn't -- wouldn't know.  
25 I'm sorry, when you say September 19,  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Q. Between then and the closing?  
3 A. No.  
4 Q. Was somebody tasked with doing that?  
5 Sorry. Let me be more precise.  
6 Was somebody tasked with responding to  
7 your requests reflected in that e-mail?  
8 A. The -- I mean, the Lehman Ops. Team  
9 was tasked with reconciling and all, but weeks  
10 went on. Nothing was produced. They were  
11 unable to reconcile for weeks. You know, it --  
12 you know, because their clearing bank turned off  
13 the systems. They had no idea what was in their  
14 box. The quality of data was poor.  
15 (Exhibit 214, an e-mail from T.  
16 Hasenpusch to A. Blackwell and others, with  
17 attachment, marked for identification, as of  
18 this date.)  
19 Q. I've just handed you what has been  
20 marked as Exhibit 214, which is a brief e-mail  
21 and a one-page attachment. Feel free to take a  
22 moment and look it over.  
23 (Document review.)  
24 Q. You'll see at the top there about  
25 eight lines down your name is among many listed  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 that was the day we effected the repo --  
3 Q. That was the day of the bankruptcy  
4 court proceeding that I think you said earlier  
5 you went to.  
6 A. That's right. We did the replacement  
7 transaction on Thursday, you're right.  
8 Q. The 18th.  
9 A. I don't know if assets moved across on  
10 Friday. I just don't know.  
11 Q. Actually, let me ask that a little bit  
12 differently.  
13 Do you remember whether any assets  
14 were moved from Lehman's clearance box at DTC to  
15 Barclays on September 19?  
16 A. Don't remember. Don't know.  
17 Q. Have you finished reading it?  
18 A. Yes.  
19 Q. You'll see at the top it lists  
20 "objective" and down below this chart it says,  
21 "Methodology Employed: Number 1. Actual  
22 delivery EOD Friday (800 million to 1 billion)."  
23 Does that refresh your recollection at  
24 all?  
25 A. No.  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 MR. STERN: Objection to the form.  
3 A. No.  
4 **Q. You said earlier that -- and this**  
5 **won't be your exact words, so correct me if this**  
6 **is not your recollection -- that Lehman Brothers**  
7 **believed there was an excess of assets beyond**  
8 **the 15c3 requirement; does that sound correct?**  
9 A. Lehman believed that the last time  
10 they did the 15c3 calculation there was an  
11 excess collateral over and above the  
12 requirement.  
13 **Q. Do you remember how you learned that?**  
14 A. Lehman employees would have told me  
15 that there was excess collateral in the 15c3  
16 account.  
17 **Q. Do you recall who told you that?**  
18 A. Could have been one of -- one or all  
19 of three employees: Maybe Ian Lowitt, Paolo  
20 Tonucci and Robert Azerad. And my reaction was:  
21 When was the last time you did a calculation?  
22 And it hadn't been done in a while because  
23 they --  
24 **Q. And do you recall --**  
25 MR. STERN: "Because they"? I don't  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 **Q. If you can take a look at Exhibit 212,**  
3 **which is the one I handed you earlier but didn't**  
4 **ask you any questions about, if you look at the**  
5 **second page, your e-mail of September 20th in**  
6 **the evening, you write, "I would pursue**  
7 **calculating a more updated requirement and**  
8 **excess."**  
9 A. Uh-huh.  
10 **Q. Why did you want to know the excess?**  
11 **Actually, let me ask -- I'm sorry, let me**  
12 **rephrase. Why did you want to know the**  
13 **requirement?**  
14 A. Lehman indicated that there were  
15 unencumbered assets in their 15c3 and excess.  
16 If you go to the below that where they say "do  
17 you know" -- they wanted me to call someone at  
18 Wells Fargo and ask them to see if I knew  
19 someone at Wells Fargo and can I get Wells Fargo  
20 to release the money.  
21 My response to them was: One is I  
22 don't know anyone at Wells Fargo; two, they're  
23 not going to release money based upon a phone  
24 call. They're going to need demonstrative  
25 evidence, right? So that's what I'm asking the  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 think you finished your answer. "Because  
3 they"?  
4 MR. WOOD: Oh, I'm sorry.  
5 A. Because they didn't have systems.  
6 JPMorgan had turned the systems off. They  
7 didn't know the status of their trades. They  
8 hadn't been able to reconcile bank accounts.  
9 They hadn't been able to reconcile the stock  
10 record.  
11 So I found the information that was  
12 conveyed to be not credible. There was a  
13 problem with everything that we got from Lehman  
14 during that week. The data was not credible.  
15 **Q. When you said the calculation hadn't**  
16 **been done in a while, do you recall how long it**  
17 **had been since the calculation had been done?**  
18 A. No. At least a week.  
19 **Q. Do you recall when you first learned**  
20 **that excess assets beyond the 15c3-3 requirement**  
21 **might be transferred to Barclays?**  
22 MR. STERN: Objection to the form.  
23 A. Probably after the close. You know,  
24 after the closing. I didn't know it was part of  
25 the deal at the time.  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 team to produce. Do a calculation. Do a -- do  
3 a rec. The deal team will need it. Lawyers  
4 will need it.  
5 If there are assets that belonged to  
6 Lehman that need to be freed up, you need to  
7 have demonstrable evidence, and they weren't  
8 able to produce it.  
9 **Q. Was it your understanding at that**  
10 **time, meaning September 20th, that under the**  
11 **deal that was being negotiated, the excess would**  
12 **go to Barclays?**  
13 A. I didn't know. I wasn't part of the,  
14 you know, the deal team. What I do recall  
15 telling Rich and where the conversations are  
16 going on that you need to be very careful  
17 because my experience in dealing with the Lehman  
18 team at the time was that nothing, no  
19 information they gave us was credible.  
20 So I do recall that, you know, and  
21 aware that, you know, that some of the deals  
22 guys are having conversations with the Lehman  
23 people working on the deal, and I would just be  
24 very careful because the books and records and  
25 what Lehman thought they had and what they  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 actually had, I mean, you couldn't validate  
3 anything.  
4 We were asking them for reports from  
5 JPMorgan and we couldn't get them. There was so  
6 much uncertainty regarding what Lehman had, what  
7 Lehman didn't have, and that's my recollection.  
8 **Q. So did you have doubts about whether**  
9 **there was an excess?**  
10 MR. STERN: Objection to the form.  
11 A. I didn't know if there was an excess  
12 or I didn't know if it was -- I had no opinion  
13 at all, you know. You know, what I had -- I had  
14 no view at all, you know.  
15 **Q. Were you aware that the 15c3 assets**  
16 **included both cash and securities?**  
17 A. No. No.  
18 **Q. If you take a look again at Exhibit**  
19 **51, which Mr. Gaffey asked you about earlier.**  
20 **It's entitled a "Transfer and Assumption**  
21 **Agreement." Again, this is a document you**  
22 **signed --**  
23 A. Yes.  
24 **Q. -- correct?**  
25 **And I know Mr. Gaffey asked you these**  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 question or the -- what it was --  
3 **Q. Actually, I'm happy to just drop that.**  
4 **Even though it may mean we cover some ground we**  
5 **covered earlier, do you recall what the purpose**  
6 **of this agreement was?**  
7 A. This agreement is to include assets  
8 associated with Lehman's option -- activity at  
9 the Options Clearing Corp. that would move  
10 across to Barclays.  
11 **Q. Under this agreement was Barclays**  
12 **assuming any kind of risks?**  
13 A. I don't know. I don't know.  
14 MR. WOOD: I don't have anything  
15 further. Thank you for your time.  
16 EXAMINATION BY  
17 MS. TAGGART:  
18 **Q. Hi, I'm Erica Taggart. I'm a**  
19 **representative from the Committee.**  
20 **You mentioned earlier today, you**  
21 **described a process of moving securities across**  
22 **generally from the Fed to Barclays as part of**  
23 **taking over the Repurchase Agreement. Do you**  
24 **generally recall that?**  
25 MR. STERN: Objection to the form.  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 questions regarding several of the documents,  
3 but I'm not sure he did on this one, so I  
4 apologize for going through this again, but do  
5 you recall whether you read this document before  
6 you signed it?  
7 A. I don't recall. I think what I  
8 indicated was I wouldn't have signed it blind,  
9 so I either read it or got an explanation as to  
10 what it was.  
11 **Q. But for this particular document, do**  
12 **you recall whether anyone explained it to you?**  
13 A. I don't recall.  
14 **Q. And I think you said earlier, and I**  
15 **don't recall your language, but something to the**  
16 **effect that the purpose of this agreement was**  
17 **because some Lehman assets were moving to**  
18 **Barclays?**  
19 MR. STERN: Objection to the form.  
20 Was there a question? What is the  
21 question?  
22 **Q. Is that roughly what you said earlier?**  
23 MR. STERN: Objection to the form.  
24 A. I don't recall -- I remember talking  
25 about it. I don't recall specifically the  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 A. Yes.  
3 **Q. I want to find out a little bit more**  
4 **about what that means from an operations point**  
5 **to move securities across.**  
6 A. Uh-huh.  
7 **Q. First of all, where were the**  
8 **securities that were pledged for the Fed**  
9 **Repurchase Agreement, where were those initially**  
10 **kept?**  
11 A. Erica, I want to clarify something you  
12 said, right? You said securities moved across  
13 from the Fed, right? Some of the securities  
14 moved across the Fed wire and some of them moved  
15 through DTC.  
16 **Q. Okay.**  
17 A. Okay?  
18 **Q. And maybe you can --**  
19 **Sorry. Please.**  
20 A. So Lehman Brothers had a pool of  
21 securities that I'm speculating they couldn't  
22 finance in the open market because of their  
23 fragile state. So the Fed financed -- so those  
24 securities were held in Lehman's account at  
25 JPMorgan.  
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<p style="text-align: right;">Page 182</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       Lehman Brothers would deliver those</p> <p>3 securities to the Federal Reserve using three</p> <p>4 facilities at the Fed, and I presume they were</p> <p>5 held in a Fed account at JPMorgan and the Fed,</p> <p>6 in turn, would have moved cash to finance those</p> <p>7 positions -- move cash into a Lehman account at</p> <p>8 JPMorgan.</p> <p>9       When the --</p> <p>10      <b>Q. Keep going.</b></p> <p>11      A. When the Fed unwound that transaction,</p> <p>12 they freed up those securities, moving the</p> <p>13 securities into accounts at JPMorgan. Lehman</p> <p>14 returns the cash, so now Lehman is sitting with</p> <p>15 securities in its accounts at JPMorgan and they</p> <p>16 were going to move across to Barclays and</p> <p>17 Barclays was going to move cash.</p> <p>18       Now, depending upon -- so Barclays</p> <p>19 wires \$45 billion in cash, and depending upon</p> <p>20 whether they're equities or corporates or U.S.</p> <p>21 treasuries, the means at which they move across</p> <p>22 varies.</p> <p>23      <b>Q. Okay. Good. That's helpful.</b></p> <p>24       First of all, when you said that you</p> <p>25 couldn't finance it on the open market, can you</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 183</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2       give me a few examples of open market options</p> <p>3 that are sometimes available for financing?</p> <p>4       MR. STERN: Objection to the form.</p> <p>5       You mean Lehman couldn't finance?</p> <p>6       MS. TAGGART: Yes, but now I'm just</p> <p>7 saying just generally on the open market,</p> <p>8 who are other counterparties --</p> <p>9       MR. STERN: Wait. Wait. I want to</p> <p>10 hear the question.</p> <p>11      <b>Q. Can you give me some examples of other</b></p> <p>12 <b>parties that do financing on the open market?</b></p> <p>13       MR. STERN: Objection to the form.</p> <p>14      A. Every dealer finances its balance</p> <p>15 sheet with third parties.</p> <p>16      <b>Q. Can you give me an example?</b></p> <p>17       MR. STERN: Objection to the form.</p> <p>18      <b>Q. Like banks?</b></p> <p>19      A. Banks. Hedge funds.</p> <p>20      <b>Q. My question, this is slightly out of</b></p> <p>21 <b>order, but when you were talking about haircuts</b></p> <p>22 <b>that happened in financing, do those -- are</b></p> <p>23 <b>haircuts also taken when you get financing on</b></p> <p>24 <b>the open market?</b></p> <p>25      A. Yes.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 184</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2      <b>Q. You also mentioned the term "a normal</b></p> <p>3 <b>haircut." What did you mean by "a normal</b></p> <p>4 <b>haircut"?</b></p> <p>5       MR. STERN: Objection to the form.</p> <p>6      A. There are different haircuts that get</p> <p>7 ascribed to different assets, and -- so it's the</p> <p>8 quality of the underlying asset that impacts the</p> <p>9 haircut. It's also the creditworthiness of the</p> <p>10 counterparty. So you have two kind of variables</p> <p>11 that impact the haircuts.</p> <p>12      <b>Q. Does the amount of haircuts that the</b></p> <p>13 <b>Fed usually requires, how does that compare to</b></p> <p>14 <b>the amount of haircut that financing on the open</b></p> <p>15 <b>market usually requires?</b></p> <p>16      A. I'm not a market practitioner, but I</p> <p>17 would expect the Fed to be competitive and</p> <p>18 comparable. I think the Fed is probably more</p> <p>19 selective in terms of the quality of assets that</p> <p>20 they take than certain borrowers of securities.</p> <p>21 I mean, you know, there's a risk in a price and</p> <p>22 everything.</p> <p>23      <b>Q. Have you personally been involved in</b></p> <p>24 <b>negotiating with the Fed for any Repurchase</b></p> <p>25 <b>Agreements --</b></p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 185</p> <p>1       HIGHLY CONFIDENTIAL - G. LaROCCA</p> <p>2      A. No.</p> <p>3      <b>Q. -- for Barclays?</b></p> <p>4      A. No.</p> <p>5      <b>Q. And are you aware at all of the</b></p> <p>6 <b>process that the Fed takes in determining the</b></p> <p>7 <b>amount of a haircut for a given Repurchase</b></p> <p>8 <b>Agreement?</b></p> <p>9      A. No.</p> <p>10     <b>Q. What's your understanding of the range</b></p> <p>11 <b>of a haircut that would be in the normal range?</b></p> <p>12     A. There was a time when I knew this</p> <p>13 stuff cold years ago.</p> <p>14     U.S. treasuries, T Bill at one point</p> <p>15 in time might have been a 2 percent haircut.</p> <p>16 Listed equities might have been a 20 percent</p> <p>17 haircut. You know, it varies really depending</p> <p>18 upon the nature of the assets.</p> <p>19     <b>Q. Did you know what amount of haircut</b></p> <p>20 <b>had been taken in this particular Repurchase</b></p> <p>21 <b>Agreement --</b></p> <p>22     A. No idea.</p> <p>23     <b>Q. Sorry. Let me get it all on the</b></p> <p>24 <b>record.</b></p> <p>25       Do you know what was the amount of</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 186</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       haircut that the Fed had required in the 3       Repurchase Agreement with Lehman that Barclays 4       took over that you described today? 5       A. No idea. 6       Q. So then also going back to the process 7       of moving securities across, you mentioned that 8       it starts where there are securities that were 9       in Lehman's account in JPMorgan; is that right? 10      A. Yes. 11      Q. And then Lehman, as part of the 12      Repurchase Agreement with the Fed, moved those 13      securities to the three facilities that were at 14      the Fed; is that right? 15      MR. STERN: Can I hear the question 16      again? 17      A. I'm not sure you got that right. Can 18      you repeat that? 19      (Record read.) 20      A. Correct. 21      Q. And then when they move it to the 22      three facilities, does it go to a Fed account at 23      JPMorgan or did you mention that there was a 24      separate account that the Fed had themselves? 25      A. I'm not certain. TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 187</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       Q. And then when it's time to move 3       securities to get to Barclays, first, do those 4       securities go from wherever the Fed has taken it 5       into an account at JPMorgan? 6       A. Into Lehman's account at JPMorgan. 7       Q. Okay. And then when it goes from 8       Lehman's account at JPMorgan to Barclays, what 9       account at Barclays did it go into? 10      A. I don't have the specifics of that. 11      You say -- 12      Q. Is it a JPMorgan account? 13      A. Yes, Barclays has an account at 14      JPMorgan. 15      Q. And so it was -- 16      A. I'm sorry. I'm sorry. Let me clarify 17      that. It was our accounts at Bank of New York. 18      Q. Okay. 19      A. So Barclays clears at Bank of New 20      York. 21      Q. Okay. And you also -- 22      A. The cash went to Barclays' account at 23      JPMorgan. 24      Q. Now, you mentioned that many of the 25      securities that were part of that Repurchase TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 188</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       Agreement did reach Barclays? 3       A. Uh-huh. 4       Q. But that there was about 7 billion, 5       approximately, of collateral that did not make 6       it to Barclays? 7       A. Correct. 8       Q. Do you remember that? 9       Of the securities that did move to 10      Barclays, were those all securities that had 11      been part of the Fed Repurchase Agreement? 12      A. Many of them were. 13      Q. Of the collateral that did make it to 14      Barclays, was any of that collateral not part of 15      what had been pledged to the Fed under the 16      Repurchase Agreement? 17      A. Yes. 18      Q. How do you know that? 19      A. There are detailed reconciliations 20      that were done with Barclays, JPMorgan and the 21      Fed, so our intention was to -- our expectation 22      was that we would receive all the securities 23      that the Fed held in -- on behalf of Lehman 24      Brothers, and because of numerous operational 25      hiccups on the part of Lehman, JPMorgan, et TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 189</p> <p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b> 2       cetera, the actual portfolio of securities did 3       not move -- that the Fed held did not move in 4       its entirety. A large subset of those moved, 5       and some things that we should have gotten, 6       didn't get, and we got other things. And 7       there's been -- that work has been -- that's 8       been reconciled, you know, so... 9       Q. Before I get into understanding this a 10      little more, first, I just want to know the 11      source of your information. What input did you 12      have into the process of doing these detailed 13      reconciliations? 14      A. None. 15      Q. How did you know that they took place? 16      A. The Fed required us to reconcile -- to 17      provide them a listing of all the securities we 18      received. 19      Q. Who did do that? 20      A. I believe it was the Fed. 21      Q. And did anybody at Barclays 22      participate in doing that detailed 23      reconciliation of what was received? 24      A. I don't know. 25      Q. Did you see documents that did that TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       <b>reconciliation?</b></p> <p>3       A. I saw summary reports which, if I</p> <p>4       could -- and the level of reports that I would</p> <p>5       have looked at, if we were supposed to receive</p> <p>6       10,000 securities, maybe we got 9,800 of the</p> <p>7       same Cusips. Of the 9,000 -- the numbers are</p> <p>8       just illustrative of what I'm describing so you</p> <p>9       get an idea of the high level summary.</p> <p>10       So maybe we got an indication that the</p> <p>11       Fed held 10,000 securities. We maybe got some</p> <p>12       large percentage of those, and for those that we</p> <p>13       got that were held by the Fed, we would have</p> <p>14       been told that the quantities are similar in</p> <p>15       what the Fed had. If the quantities were</p> <p>16       different, we were told that. We were told the</p> <p>17       securities that we got that the Fed didn't, you</p> <p>18       know, that the Fed didn't have.</p> <p>19       <b>Q. When did this take place?</b></p> <p>20       A. Weeks.</p> <p>21       <b>Q. Weeks following the closing?</b></p> <p>22       A. Weeks following the closing.</p> <p>23       <b>Q. And did you discuss this</b></p> <p>24       <b>reconciliation with anyone?</b></p> <p>25       A. It was part of the discussion with</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       JPMorgan to resolve the, you know, the \$7</p> <p>3       billion cash that didn't immediately move</p> <p>4       across.</p> <p>5       <b>Q. Who have you personally spoken to</b></p> <p>6       <b>about the issue of this reconciliation of what</b></p> <p>7       <b>did and didn't make it from the Fed?</b></p> <p>8       A. Personally? Jonathan Hughes.</p> <p>9       <b>Q. Anyone else?</b></p> <p>10       A. No.</p> <p>11       <b>Q. Did you personally speak to anyone at</b></p> <p>12       <b>JPMorgan about it?</b></p> <p>13       A. No.</p> <p>14       <b>Q. Did you speak to anyone at the Fed</b></p> <p>15       <b>about it?</b></p> <p>16       A. Yes.</p> <p>17       <b>Q. Who is that?</b></p> <p>18       A. It would be Stephanie Heller, who was</p> <p>19       my primary interface.</p> <p>20       <b>Q. So, concentrating on now the</b></p> <p>21       <b>securities that did get transferred but were not</b></p> <p>22       <b>part of what were originally with the Fed for</b></p> <p>23       <b>the Repurchase Agreement, first of all, can you</b></p> <p>24       <b>give me a sense of what range of all the</b></p> <p>25       <b>securities --</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       A. Couldn't tell you.</p> <p>3       <b>Q. Do you know who chose -- well, first,</b></p> <p>4       <b>where did those other securities come from, if</b></p> <p>5       <b>not from the Repurchase Agreement?</b></p> <p>6       A. No idea.</p> <p>7       <b>Q. And do you know who chose the</b></p> <p>8       <b>securities to put --</b></p> <p>9       A. No.</p> <p>10       <b>Q. -- to include?</b></p> <p>11       A. No idea.</p> <p>12       <b>Q. Do you know whether it was someone</b></p> <p>13       <b>from Barclays?</b></p> <p>14       A. It would have been Lehman Brothers.</p> <p>15       We didn't, you know ...</p> <p>16       <b>Q. Do you know if JPMorgan had any role</b></p> <p>17       <b>in choosing?</b></p> <p>18       A. No idea.</p> <p>19       <b>Q. Did Barclays keep those securities</b></p> <p>20       <b>that -- all the ones that had not been part of</b></p> <p>21       <b>the Fed but then did transfer as part of taking</b></p> <p>22       <b>over the Repurchase Agreement?</b></p> <p>23       A. To the best of my knowledge, yes.</p> <p>24       <b>Q. Did Barclays reject any securities</b></p> <p>25       <b>that were given as part of this collateral when</b></p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       <b>HIGHLY CONFIDENTIAL - G. LaROCCA</b></p> <p>2       <b>you took over the Repurchase Agreement?</b></p> <p>3       A. I don't know the answer to that.</p> <p>4       The --</p> <p>5       I want to clarify the answer. I don't</p> <p>6       know the answer to whether there were rejects.</p> <p>7       What I don't know is when the bulk of those</p> <p>8       securities moved across. I suspect if there</p> <p>9       was, they were minimal, okay?</p> <p>10       Now, there was a discussion that I</p> <p>11       participated in with regarding the -- on the</p> <p>12       morning of the close, there was a discussion</p> <p>13       that I participated in with regard to JPMorgan</p> <p>14       wanting to give us collateral in lieu of cash,</p> <p>15       and we rejected the collateral that JPMorgan</p> <p>16       offered up.</p> <p>17       <b>Q. Do you know who selected the</b></p> <p>18       <b>collateral that JPMorgan wanted to give?</b></p> <p>19       A. No.</p> <p>20       <b>Q. And do you know where that collateral</b></p> <p>21       <b>came from?</b></p> <p>22       A. No.</p> <p>23       (Exhibit 215, a document bearing Bates</p> <p>24       Nos. BCI-EX-(S)-00034528 through 34529,</p> <p>25       marked for identification, as of this date.)</p> <p>          TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 Q. Sir, I have put before you an exhibit  
3 we're marking as 215 that goes from  
4 BCI-EX-(S)-00034528 through 29, and I -- why  
5 don't you just take a minute to look through  
6 this.

7 (Document review.)

8 Q. Okay. So let's look at the bottom  
9 e-mail from Teri Scott. Who is Teri Scott?

10 A. Teri Scott is a senior finance  
11 professional. She works in our accounting  
12 group.

13 Q. Does he sometimes report information  
14 to you?

15 A. Teri's a female.

16 Q. Excuse me. Does she sometimes report  
17 information to you?

18 A. Sometimes. Not normally. You know,  
19 not in the normal course. Not in the normal  
20 course.

21 Q. Let me focus first, if you go to the  
22 last page on the item that's 2, third from the  
23 bottom bullet point, there's something that's in  
24 bold that says, "A list of Cusips to be excluded  
25 has been provided to ensure collateral we are  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 not purchasing is excluded in this transfer."

3 Do you know what that's referring to?

4 A. Not specifically, no.

5 Q. Do you remember ever having a list of  
6 Cusips that would be excluded from the  
7 collateral?

8 A. No. No, not me personally. Don't  
9 recall seeing it.

10 Q. Why don't you take a longer look at  
11 that list on number 2 that describes this \$47  
12 billion transaction, and putting aside the one  
13 that's in bold, do you know if the remaining  
14 bullet points are accurate?

15 MR. STERN: Objection to the form.

16 A. Well, define "accurate." So the 47  
17 billion was never a number I knew, right? The  
18 number I knew was 45 billion, and I would have  
19 heard that firsthand from -- you know, because I  
20 would have negotiated the amount with -- well,  
21 actually, I don't know that we negotiated the  
22 amount. That was the amount the Fed required us  
23 for the collateral that they held. The number  
24 would have been given to us by Lucinda Brickler,  
25 so I don't know where the \$47 billion number  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 comes from.

3 Q. Okay.

4 A. Nor were we intending to do a one-week  
5 term.

6 Q. Uh-huh.

7 A. So I would say there's a lot of  
8 inaccuracies with that.

9 Q. Okay. Were you involved at all in  
10 discussions or transactions relating to  
11 residential mortgage-backed securities?

12 A. No.

13 Q. Do you know one way or another whether  
14 Barclays received any residential  
15 mortgage-backed securities --

16 A. Don't know.

17 Q. -- as part of this transaction?

18 A. I don't know definitively whether  
19 residential mortgages were in the assets that  
20 moved across associated with the Fed replacement  
21 repo.

22 Q. Okay.

23 A. It was a very diverse group of  
24 securities, thousands and thousands of Cusips,  
25 and I would not be surprised if there were  
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1 HIGHLY CONFIDENTIAL - G. LaROCCA  
2 mortgages in that pool of assets, but I don't  
3 know for sure.

4 MS. TAGGART: Okay. With the same  
5 reservations that my colleagues had about  
6 the documents that we had just received and  
7 have not reviewed, I don't have any other  
8 questions.

9 THE WITNESS: Okay.

10 MS. TAGGART: Thank you.

11 MR. GAFFEY: One quick follow-up. I  
12 can do from down here.

13 EXAMINATION BY

14 MR. GAFFEY:

15 Q. A couple of the documents referred to  
16 the so-called conversion. Do you know what  
17 that's a reference to, Mr. LaRocca?

18 A. No. Okay? I recall seeing it. You'd  
19 have to look at the documents if you want me to  
20 see if there's -- it rings a bell, but I don't  
21 know what -- I remember seeing "conversion" in  
22 the subject field in some of the documents, but  
23 doesn't resonate with me or mean anything to me.

24 MR. GAFFEY: Okay. I have nothing  
25 further.

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<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 MR. STERN: Anybody else? 3 MR. WOOD: No. 4 MR. STERN: I have just two quick 5 clarifications. 6 EXAMINATION BY 7 MR. STERN: 8 Q. Earlier you were asked whether anybody 9 expressed concern to you about the collateral 10 that came over to Barclays in the Fed 11 replacement transaction. Can you clarify for 12 the record what your recollection is in that 13 regard? 14 A. I'm sorry, the -- that's a 15 clarification of a question I got earlier? 16 Q. Yeah, I'm asking, earlier you were 17 asked whether anybody expressed concern to you, 18 to you, about the collateral that came over to 19 Barclays in the Fed replacement transaction, and 20 I'm asking if you can clarify what your 21 recollection is in that regard? 22 A. Can you tell me how I answered it 23 earlier? 24 Q. Just tell us your best recollection. 25 A. Well, everyone had concern, right? TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 But, you know, wasn't, wasn't -- it wasn't that 3 I could solve their problems, right? So 4 everyone was concerned about the assets that 5 were going to move from Lehman Brothers over to 6 Barclays Capital. 7 That's how I would answer the 8 question. I don't know if that's consistent 9 with how I answered it before. 10 Q. And did you personally have any role 11 in evaluating the collateral? 12 A. None. 13 Q. You were asked questions about a 14 post-closing conversation you had with Mike 15 Keegan. Do you know whether Mr. Keegan was 16 involved in the transaction in the period from 17 Wednesday, September 17, 2008, through the 18 closing on September 22, 2008? 19 A. I don't know -- 20 (Continued on the next page to include 21 the jurat.) 22 23 24 25 TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 MR. GAFFEY: Objection to the form. 3 THE WITNESS: Excuse me? 4 MR. GAFFEY: You can ignore me. 5 A. I don't know the answer. I don't know 6 to what extent Mike was involved in the 7 transaction prior to closing. 8 9 MR. STERN: That's all I have. 10 (Time Noted: 3:02 P.M.) 11 oOo 12 13 14 15 16 17 18 19 20 21 22 23 24 25 GERARD LaROCCA Subscribed and sworn to before me this day of 2009. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - G. LaROCCA 2 CERTIFICATE 3 STATE OF NEW YORK ) 4 : ss 5 COUNTY OF NEW YORK) 6 I, Kathy S. Klepfer, a Registered 7 Merit Reporter and Notary Public within and 8 for the State of New York, do hereby 9 certify: 10 That GERARD LaROCCA, the witness whose 11 deposition is herein before set forth, was 12 duly sworn by me and that such deposition is 13 a true record of the testimony given by such 14 witness. 15 I further certify that I am not 16 related to any of the parties to this action 17 by blood or marriage and that I am in no way 18 interested in the outcome of this matter. 19 I further certify that neither the 20 deponent nor a party requested a review of 21 the transcript pursuant to Federal Rule of 22 Civil Procedure 30(e) before the deposition 23 was completed. 24 In witness whereof, I have hereunto 25 set my hand this 19th day of August, 2009. TSG Reporting - Worldwide (877) 702-9580</p>

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2	NAME OF CASE: In re Lehman Brothers		
3	DATE OF DEPOSITION: August 19, 2009		
4	NAME OF WITNESS: Gerard LaRocca		
5	Reason Codes:		
6	1. To clarify the record.		
7	2. To conform to the facts.		
8	3. To correct transcription errors.		
9	Page _____ Line _____ Reason _____		
10	From _____ to _____		
11	Page _____ Line _____ Reason _____		
12	From _____ to _____		
13	Page _____ Line _____ Reason _____		
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# BCI EXHIBIT

83



1

2

UNITED STATES BANKRUPTCY COURT

3

SOUTHERN DISTRICT OF NEW YORK

4

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5

In Re:

6

Chapter 11

7

LEHMAN BROTHERS

Case No. 08-13555(JMP)

8

HOLDINGS, INC., et al, (Jointly Administered)

9

Debtors.

10

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11

12

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

13

DEPOSITION OF IAN LOWITT

14

New York, New York

15

August 20, 2009

16

17

Reported by:

18

MARY F. BOWMAN, RPR, CRR

19

JOB NO. 24043

20

21

22

23

24

25

Page 2	Page 3
<p>1 2 3 4 5 August 20, 2009 6 9:31 a.m. 7 8 9 Deposition of IAN LOWITT, held at 10 the offices of Jones Day, LLP, 222 East 41st 11 Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: ROBERT GAFFEY, ESQ. 8 BRIDGET CRAWFORD, ESQ. 9 10 BOIES, SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 5301 Wisconsin Avenue, NW - Suite 800 13 Washington, DC 20015 14 BY: HAMISH HUME, ESQ. 15 16 WILLKIE FARR &amp; GALLAGHER, LLP 17 Attorneys for the Witness 18 1875 K Street NW 19 Washington DC 20006-1238 20 BY: RICHARD D. BERNSTEIN, ESQ. 21 KELLY M. HNATT, ESQ. 22 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 4 Attorneys for the Creditors Committee 5 865 Figueroa Street, 10th Floor 6 Los Angeles, CA 90017 7 BY: ERICA P. TAGGART, ESQ. 8 9 JENNER &amp; BLOCK, LLC 10 Attorneys for the Examiner 11 330 N. Wabash Avenue 12 Chicago, Illinois 60611-7603 13 BY: ROBERT L. BYMAN, ESQ. 14 15 HUGHES, HUBBARD &amp; REED, LLP 16 Attorneys for the SIPA Trustee 17 One Battery Park Plaza 18 New York, New York 10004-1482 19 BY: NEIL J. OXFORD, ESQ. 20 JOHN F. WOOD, ESQ. 21 22 Also Present: 23 THOMAS E. HOMMEL, ESQ. 24 Lehman Brothers Holdings 25 PHILIP E. KRUSE, Alvarez &amp; Marsal</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

Page 6

1 LOWITT - HIGHLY CONFIDENTIAL  
2 IAN LOWITT,  
3 called as a witness by the parties,  
4 having been duly sworn, testified as  
5 follows:  
6 EXAMINATION BY  
7 MR. GAFFEY:  
8 Q. Good morning, Mr. Lowitt. My name is  
9 Bob Gaffey. We met briefly before. I am with  
10 Jones Day. We're special counsel to the estate of  
11 Lehman Brothers Holdings, Inc., and as you  
12 probably know, we are looking into issues arising  
13 from the transaction in September of 2008 wherein  
14 Barclays purchased certain assets of Lehman.  
15 I should say to start, I have had a  
16 request from my friends at the bottom of the table  
17 who have been with us the last couple of days to  
18 keep my voice up so they can hear, and I am going  
19 to ask you to do the same thing.  
20 Have you had your deposition taken  
21 before?  
22 A. I have not.  
23 Q. Just a couple of ground rules. One,  
24 try and keep your voice up for everybody. Two,  
25 please give me audible answers. The court

Page 8

1 LOWITT - HIGHLY CONFIDENTIAL  
2 and did a PPE, philosophy, politics and economics,  
3 and then I did a graduate degree in economics at  
4 Oxford.  
5 Q. What college at Oxford?  
6 A. I was at Merton College.  
7 Q. After you took your second degree at  
8 Oxford, is that the end of your education?  
9 A. That is the end of my education.  
10 Q. Do you keep any professional licenses?  
11 A. I do not.  
12 Q. Have you ever? Series 7, series 23,  
13 anything like that?  
14 A. No.  
15 Q. Now, you currently are employed as the  
16 chief operating officer of Barclays Wealth  
17 Americas; is that correct?  
18 A. That is correct.  
19 Q. How long have you held that position?  
20 A. Since April of this year.  
21 Q. And when did you first start work for  
22 Barclays?  
23 A. I joined Barclays I guess the Monday  
24 that the deal closed.  
25 Q. That would be September 22nd?

Page 7

1 LOWITT - HIGHLY CONFIDENTIAL  
2 reporter can't take down a nod or a shake of the  
3 head. So for the sake of a clear record, please  
4 try to do that.  
5 If you need a break at any time, say  
6 so. If there is a question pending and there is  
7 not an issue about whether there's a privilege  
8 applying to the question, what I would ask is for  
9 an answer to that, and then if you need to, you  
10 can step out into the hall and we will take a  
11 short break.  
12 A. Okay. Thank you.  
13 Q. Can you give me a description,  
14 Mr. Lowitt, of your education after secondary  
15 school?  
16 A. I attended the University of  
17 Witwatersrand in South Africa, in Johannesburg.  
18 MR. BYMAN: I cannot hear you at all.  
19 Can you speak up.  
20 A. I attended the University of  
21 Witwatersrand in Johannesburg, South Africa, did  
22 an undergraduate degree in electrical engineering,  
23 and then I did a Master's degree in electrical  
24 engineering.  
25 And then I went to Oxford in England

Page 9

1 LOWITT - HIGHLY CONFIDENTIAL  
2 A. I believe that's correct.  
3 MR. GAFFEY: Off the record for a  
4 second.  
5 (Off-the-record discussion)  
6 Q. What was your position when you first  
7 joined Barclays on September 22nd?  
8 A. I didn't have a position on the day  
9 that I joined Barclays on September 22nd, but  
10 within a few days, I was appointed as the director  
11 of integration for the Lehman businesses.  
12 Q. And what were your duties as director  
13 of integration?  
14 A. To work with Barclays on integrating  
15 the Lehman businesses into the Barclays  
16 infrastructure.  
17 Q. Is that the position you held until  
18 April when you took your current position as head  
19 of Barclays Wealth?  
20 A. That's correct.  
21 Q. And prior to taking up employment with  
22 Barclays, you were employed by Lehman, correct?  
23 A. That is correct.  
24 Q. Do you know which entity within the  
25 Lehman family you were employed by?

Page 10	Page 11
<p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2           A. I don't know with certainty. I</p> <p>3 believe it was LBI, but I don't know with</p> <p>4 certainty.</p> <p>5           Q. As I understand it, you began work at</p> <p>6 Lehman in about 1994 as head of corporate</p> <p>7 development?</p> <p>8           A. That is correct.</p> <p>9           Q. Was that head of corporate development</p> <p>10 at Lehman Brothers Holdings, Inc.? Do you recall</p> <p>11 that?</p> <p>12           A. I know that my position was head of</p> <p>13 corporate development. I can't be clear on</p> <p>14 whether it was the holding company that employed</p> <p>15 me or LBI. It is not a distinction that I would</p> <p>16 have noted at that time.</p> <p>17           Q. And you served as treasurer and global</p> <p>18 head of tax from 2000 to 2005, correct?</p> <p>19           A. That is correct.</p> <p>20           Q. And from July of 2005 until October of</p> <p>21 2006, you acted as chief administrative officer of</p> <p>22 LBHI Europe; is that correct?</p> <p>23           A. I was the chief administrative officer</p> <p>24 for the European business. I don't know whether</p> <p>25 that was holdings or LBIE, but that was my</p>	<p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 position.</p> <p>3           Q. And after you -- did you take on a</p> <p>4 position after you acted as chief administrative</p> <p>5 officer?</p> <p>6           A. Yes, I did.</p> <p>7           Q. What position was that?</p> <p>8           A. I was the co-global CAO for Lehman.</p> <p>9           Q. How long were you the co-global CAO</p> <p>10 for Lehman?</p> <p>11           A. From when I returned from London,</p> <p>12 which I recall as being January 2007, through my</p> <p>13 employment with Barclays.</p> <p>14           Q. And then in or around June of 2008 --</p> <p>15 did you leave Lehman at any time?</p> <p>16           A. I did not.</p> <p>17           Q. In or around June of 2008, you became</p> <p>18 chief financial officer, correct?</p> <p>19           A. That is correct.</p> <p>20           Q. And what were your duties as chief</p> <p>21 financial officer?</p> <p>22           A. I needed to run the finance</p> <p>23 department, the product control, the financial</p> <p>24 control, tax and treasury.</p> <p>25           Q. And within those responsibilities were</p>
Page 12	Page 13
<p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 you responsible to insure that the books and</p> <p>3 records of the corporation were kept accurately?</p> <p>4           A. Maintaining the accuracy of the books</p> <p>5 and records was the responsibility of the -- a lot</p> <p>6 of people in the finance department, and it</p> <p>7 included myself.</p> <p>8           Q. Well, it included yourself but</p> <p>9 ultimately reported up to yourself, correct?</p> <p>10           A. Correct.</p> <p>11           Q. You were the man in charge of that</p> <p>12 operation?</p> <p>13           A. I was in charge of that.</p> <p>14           Q. Now, there came a time in September of</p> <p>15 2008, Mr. Lowitt, did there not, when Lehman</p> <p>16 engaged in discussions with Barclays about a</p> <p>17 potential acquisition of Lehman by Barclays? Is</p> <p>18 that correct?</p> <p>19           A. That is correct.</p> <p>20           Q. And to your knowledge, when did those</p> <p>21 discussions first take place?</p> <p>22           A. I believe there were discussions that</p> <p>23 began on the Friday before the bankruptcy filing</p> <p>24 on the Sunday. I wasn't party to those</p> <p>25 discussions, but I believe that there was contact</p>	<p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 between people at Lehman and people at Barclays</p> <p>3 from that point.</p> <p>4           Q. And although you were not involved in</p> <p>5 the discussions in those -- that period before the</p> <p>6 bankruptcy, did you play any role or have any</p> <p>7 involvement in activities related to those</p> <p>8 discussions?</p> <p>9           A. There was some due diligence work that</p> <p>10 was done on the Friday. I didn't participate in</p> <p>11 those meetings but I was aware that it had taken</p> <p>12 place.</p> <p>13           Q. Was any of the due diligence work</p> <p>14 being done under your supervision or were you</p> <p>15 responsible for any part of it?</p> <p>16           A. There were -- the people who were</p> <p>17 meeting with the folks at Barclays were people who</p> <p>18 reported to me.</p> <p>19           Q. Who were those people who were meeting</p> <p>20 with Barclays? Again I am still in the period</p> <p>21 before the bankruptcy filing.</p> <p>22           A. My recollection is Martin Kelly met</p> <p>23 with some of his counterparties at Barclays.</p> <p>24           Q. As CFO of Lehman, to whom did you</p> <p>25 report?</p>

<p style="text-align: right;">Page 14</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2           A. I reported to Bart McDade, who was the</p> <p>3 president of Lehman Brothers.</p> <p>4           <b>Q. Did you have one or more persons who</b></p> <p>5 <b>were direct reports to you?</b></p> <p>6           A. I did.</p> <p>7           <b>Q. Who were your direct reports?</b></p> <p>8           A. Well, I had direct reports within the</p> <p>9 finance organization, which included Jerry Reilly,</p> <p>10 who was the product controller; Martin Kelly, who</p> <p>11 was the financial controller; Paolo Tonucci, who</p> <p>12 was the treasurer of the firm; John DeRosa, who</p> <p>13 was the head of tax, in addition to others.</p> <p>14           And then I had reports which I</p> <p>15 maintained through my CAO role which included the</p> <p>16 other head of IT, which was Bridget O'Connor, and</p> <p>17 the head of operations, which was Alastair</p> <p>18 Blackwell. It also included Bob Lieberberg, who</p> <p>19 ran expense management for us, and others.</p> <p>20           MR. BYMAN: I hate to be a pest, but</p> <p>21 your voice does drop. It is difficult to</p> <p>22 hear you. I don't want to ask the reporter</p> <p>23 to repeat things which will make double your</p> <p>24 agony, so --</p> <p>25           THE WITNESS: I will try. I</p>	<p style="text-align: right;">Page 15</p> <p>1           LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 apologize.</p> <p>3 BY MR. GAFFEY:</p> <p>4           <b>Q. I won't think you're yelling at me if</b></p> <p>5 <b>you keep your voice up.</b></p> <p>6           Now, the discussions between Lehman</p> <p>7 and Barclays that were taking place prior to the</p> <p>8 filing of the bankruptcy, as I understand it, sir,</p> <p>9 did not result in an agreement between the two</p> <p>10 entities. Is that your understanding as well?</p> <p>11           A. That is my understanding.</p> <p>12           <b>Q. And to your knowledge, did discussions</b></p> <p>13 <b>at some point resume between Barclays and Lehman?</b></p> <p>14           A. Yes, they did.</p> <p>15           <b>Q. And when did that occur?</b></p> <p>16           A. I believe that Bart McDade was in</p> <p>17 contact with folks at Barclays on the Monday</p> <p>18 morning after the filing for bankruptcy.</p> <p>19           <b>Q. That would be September 15?</b></p> <p>20           A. I -- if that was --</p> <p>21           <b>Q. OK.</b></p> <p>22           A. If that was the Monday, September 15.</p> <p>23           <b>Q. And tell me what you know about the</b></p> <p>24 <b>contact Mr. McDade had with folks at Barclays</b></p> <p>25 <b>beginning on Monday the 15th.</b></p>
<p style="text-align: right;">Page 16</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2           A. I understood from Bart that Barclays</p> <p>3 were interested in potentially transacting an</p> <p>4 acquisition of some of the assets of LBI and</p> <p>5 buying the businesses that were in LBI or some</p> <p>6 subset of those businesses, and that the details</p> <p>7 would be worked out over the course of the next</p> <p>8 day.</p> <p>9           <b>Q. And how did you gain that</b></p> <p>10 <b>understanding? Did you speak to Bart McDade?</b></p> <p>11           A. I did speak with Bart.</p> <p>12           <b>Q. Did he tell you anything else that you</b></p> <p>13 <b>can remember now about that initial contact with</b></p> <p>14 <b>Barclays and Lehman?</b></p> <p>15           A. He also shared with me that there were</p> <p>16 eight individuals that Barclays deemed as critical</p> <p>17 to the transaction, and that I was one of those</p> <p>18 eight individuals.</p> <p>19           <b>Q. Who were the other seven?</b></p> <p>20           A. The other seven, to the best of my</p> <p>21 recollection, was Mike Gelband, Eric Felder, Ajay</p> <p>22 Nagpal, Tom Humphrey, Hyung Lee, myself.</p> <p>23           <b>Q. Is Skip McGee the last one?</b></p> <p>24           A. Skip McGee. And I -- Bart indicated</p> <p>25 to me that he was not going to be part of that</p>	<p style="text-align: right;">Page 17</p> <p>1           LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 group of eight.</p> <p>3           <b>Q. What did Mr. McDade tell you about not</b></p> <p>4 <b>being part of the group of eight, best you recall?</b></p> <p>5           A. Nothing beyond that.</p> <p>6           <b>Q. Did you understand him to be saying he</b></p> <p>7 <b>wasn't going to work at Barclays after the</b></p> <p>8 <b>transaction or he wasn't one of the eight that</b></p> <p>9 <b>Barclays considered to be critical to the deal?</b></p> <p>10           A. He just indicated that he wasn't part</p> <p>11 of the eight.</p> <p>12           <b>Q. Now, did there come a time when you</b></p> <p>13 <b>began to negotiate or -- withdrawn.</b></p> <p>14           Did there come a time when you began</p> <p>15 to discuss with Barclays the terms and conditions</p> <p>16 upon which you would be employed at Barclays after</p> <p>17 the transaction?</p> <p>18           A. I met with Rich Richie at some point</p> <p>19 on early Tuesday morning.</p> <p>20           <b>Q. And tell me about your meeting with</b></p> <p>21 <b>Mr. Richie. What did you say? What did he say?</b></p> <p>22           A. To the best of my recollection, he</p> <p>23 indicated that they wanted me to be part of the</p> <p>24 transaction, that having me be part of their</p> <p>25 organization was important. And he shared with me</p>

Page 18	Page 19
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 the terms that they would be extending to me.</p> <p>3 <b>Q. What terms did he share with you that</b></p> <p>4 <b>they would be extending to you?</b></p> <p>5 A. The terms were that a payment in</p> <p>6 February, 2009, which was equal to 80 percent of</p> <p>7 my 2007 compensation, and two additional special</p> <p>8 payments to be paid at one-year anniversaries of</p> <p>9 the deal closing, which were each equal to</p> <p>10 25 percent of my 2007 compensation.</p> <p>11 <b>Q. How much was that in dollar amount,</b></p> <p>12 <b>the 80 percent of your 2000 comp?</b></p> <p>13 A. \$6 million.</p> <p>14 MR. BERNSTEIN: Again, we as</p> <p>15 Mr. Lowitt's counsel will want to be part of</p> <p>16 the process, and I understand from last time</p> <p>17 we had a right to be part of the process in</p> <p>18 terms of maintaining the highly confidential</p> <p>19 designation for this deposition and</p> <p>20 particularly for any discussion about his</p> <p>21 compensation.</p> <p>22 MR. GAFFEY: Richard, if you mean by</p> <p>23 maintaining the highly confidential</p> <p>24 designation it is bound by the</p> <p>25 confidentiality order and our agreement that</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 everything in the depositions is highly</p> <p>3 confidential until designations come and</p> <p>4 some period after that, then I agree.</p> <p>5 I am not waiving any rights we have</p> <p>6 under the confidentiality order to go back</p> <p>7 and say we don't think it is highly</p> <p>8 confidential and to take it to the Court if</p> <p>9 we need to.</p> <p>10 MR. BERNSTEIN: I didn't think you</p> <p>11 were.</p> <p>12 MR. GAFFEY: I just wanted to make it</p> <p>13 clear.</p> <p>14 <b>Q. And the two special -- I don't know if</b></p> <p>15 <b>you called it -- the two payments you described,</b></p> <p>16 <b>one on your first anniversary and one on your</b></p> <p>17 <b>second, what are the amounts of those, sir?</b></p> <p>18 A. It is 25 percent of the 7.5. I think</p> <p>19 it is 1.875. but I may have those numbers slightly</p> <p>20 wrong.</p> <p>21 <b>Q. Did you at some point enter into a</b></p> <p>22 <b>written agreement with Barclays concerning the</b></p> <p>23 <b>terms and conditions of your employment by</b></p> <p>24 <b>Barclays?</b></p> <p>25 A. I did.</p>
Page 20	Page 21
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. About when did you do that?</b></p> <p>3 A. I think I did that on the Thursday</p> <p>4 evening.</p> <p>5 <b>Q. By the Thursday evening, you are</b></p> <p>6 <b>talking about the Thursday after the bankruptcy</b></p> <p>7 <b>filing on the 15th?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. That would be September 18th?</b></p> <p>10 A. If that's the Thursday.</p> <p>11 <b>Q. While we are looking for an exhibit</b></p> <p>12 <b>that I want to mark, Mr. Lowitt, was there any</b></p> <p>13 <b>back and forth between you and Barclays about the</b></p> <p>14 <b>financial terms of your employment?</b></p> <p>15 A. No.</p> <p>16 <b>Q. And when did you -- did they send a</b></p> <p>17 <b>draft contract at some point?</b></p> <p>18 A. They did.</p> <p>19 <b>Q. How was that delivered to you?</b></p> <p>20 A. I believe it was delivered to me by</p> <p>21 Anthony Collerton.</p> <p>22 <b>Q. And Anthony Collerton was I think head</b></p> <p>23 <b>of HR at Lehman or in HR at Lehman?</b></p> <p>24 A. He was in HR in Lehman.</p> <p>25 <b>Q. It was delivered to you by hard copy,</b></p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 <b>not by e-mail, not by electronic means?</b></p> <p>3 A. Correct. To the best of my</p> <p>4 recollection. It may have been sent to me in</p> <p>5 addition in soft copy, but I did have a hard copy.</p> <p>6 <b>Q. Do you know when any of the other</b></p> <p>7 <b>seven people that you named signed their contracts</b></p> <p>8 <b>with Barclays?</b></p> <p>9 A. I don't know when anybody else signed.</p> <p>10 My understanding was that a condition of the</p> <p>11 transaction proceeding was that the seven sign</p> <p>12 their contract.</p> <p>13 <b>Q. It was your understanding that the</b></p> <p>14 <b>seven had to sign their contracts before the</b></p> <p>15 <b>transaction closed?</b></p> <p>16 A. That it was a condition of closing,</p> <p>17 was at least my understanding.</p> <p>18 <b>Q. And from whom did you obtain that</b></p> <p>19 <b>understanding?</b></p> <p>20 A. I don't have a specific recollection</p> <p>21 of where I heard that.</p> <p>22 <b>Q. Do you have any general recollection</b></p> <p>23 <b>about that?</b></p> <p>24 A. No, I -- I don't know specific -- I</p> <p>25 have no recollection of how I got that.</p>

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2 **Q. Were you -- in the week between the**  
3 **filing of the bankruptcy on the 15th and the**  
4 **closing of the transaction on the 22nd, did you**  
5 **have any involvement in either negotiating or**  
6 **implementing the terms of the agreement?**

7 A. I didn't have a role in negotiating  
8 the transaction. And I guess I'm not sure what  
9 you mean by implementing the transaction. I  
10 certainly played a role in providing information  
11 to those folks who were doing the negotiation.

12 **Q. Were you kept apprised by Mr. McDade**  
13 **of the state of negotiations through the week?**  
14 **And by the week, I mean between the 15th and the**  
15 **22nd.**

16 A. Not in any formal way. There may have  
17 been elements that he shared with me, but I  
18 don't -- I was -- it wasn't part of -- he wasn't  
19 keeping me regularly updated on that.

20 **Q. Was one of your responsibilities**  
21 **during that week to identify assets that would be**  
22 **transferred from Lehman to Barclays?**

23 A. That is an exercise that I was  
24 involved with towards the end of that week.

25 **Q. When towards the end of the week?**

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2 happened to Lehman and worried about their  
3 futures; and then supporting, you know, specific  
4 requests, you know, from Bart and others.

5 **Q. Who were the others in addition to**  
6 **Bart that you just referred to?**

7 A. Well, the other people who were  
8 involved with the negotiation were Mark Shapiro,  
9 Mark Schaefer. Skip McGee I think was involved in  
10 some of the questions and issues, and I think  
11 Steve Berkenfeld was providing, you know, legal  
12 advice. There may have been others.

13 **Q. What were the nature of the funding**  
14 **issues that you said were a focus of your**  
15 **activities during that week?**

16 A. Well, clearly there was very  
17 substantial market disruption following the Lehman  
18 bankruptcy filing. Clearly, there was, you know,  
19 a great deal of fear in the marketplace with  
20 secured funders, and there was concern about, you  
21 know, LBI, and so we had people not rolling their  
22 secured funding and we needed to find other ways  
23 to fund the firm.

24 Initially, we were utilizing the Fed,  
25 but on Wednesday became involved, together with

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2 **Tell me on what day that began.**

3 A. I can't be more precise. I believe it  
4 was on the Friday, the 19th, after the repo  
5 transaction had taken place.

6 **Q. And prior to Friday, the 19th, did you**  
7 **have any involvement in the activities surrounding**  
8 **the transaction?**

9 MR. BERNSTEIN: Objection, vague and  
10 ambiguous.

11 But you can answer.

12 A. Yeah, I'm -- I'm not sure what you are  
13 getting at.

14 **Q. Let me try and rephrase it.**

15 As a general matter, and I'll  
16 obviously follow up on this, I am trying to get an  
17 idea, Mr. Lowitt, of what you were doing during  
18 that week. Could you sort of take me through the  
19 week and give me a general idea of what your  
20 activities were?

21 A. The focus for me during that week was  
22 a combination of dealing with funding issues,  
23 which were quite extreme; dealing with personnel  
24 issues with a number of people in the  
25 organization, very disconcerted with what had

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2 folks at Barclays, in arranging for the Fed to be  
3 taken out of their repo position with LBI and to  
4 have that repo replaced with one with Barclays.

5 **Q. And was what you were doing in**  
6 **connection with -- actually, let me just follow up**  
7 **on a phrasing. When you say rolling the funding,**  
8 **in layman's terms, does that mean not continuing**  
9 **the next day?**

10 A. Correct. People were canceling their  
11 repo trades and returning the collateral for cash.

12 **Q. When you were dealing with Barclays**  
13 **with respect to the repurchase transaction, and**  
14 **again that is something we will talk about in more**  
15 **detail today, were you --**

16 A. When you say repurchase transaction --

17 **Q. That's the transaction that I think**  
18 **you were just referring to where Barclays supplied**  
19 **funding for the firm.**

20 A. Right. Where Barclays took the Fed  
21 out of their repo position.

22 **Q. OK. And give me a little more detail,**  
23 **if you would, on your activities in connection**  
24 **with the repo transaction. What did you do in**  
25 **connection with the repo transaction?**

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A. Well, I was asked to join people from Barclays in a meeting with the Fed to talk through the logistics and details of how that transaction would take place. And then on the -- that was on the Wednesday.

And then on the Thursday was, you know, involved in -- together with other folks at Lehman, in insuring that the -- you know, the collateral movements and cash movements were taking place as, you know, expected by the transaction.

**Q. Is it fair to characterize what you were engaged in during those couple of days as negotiations with Barclays over the terms of the repo?**

A. There was no negotiation with regard to the terms of the repo. The repo was -- the repo with the Fed was governed by the haircuts that the Fed applied to various term -- parts of collateral, and then when the collateral went over to Barclays, it was again being driven by the Schedule A that Barclays had in place.

So there was no negotiation or pricing elements involved in that at all. It was just the

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mechanics of moving collateral out of the Fed and getting cash back for that, playing cash to the Fed, and then the reverse on the Barclays side, getting the collateral to Barclays and receiving cash in from Barclays.

MR. BERNSTEIN: The record says "playing cash to the Fed." Did you say "playing" or "paying"?

THE WITNESS: "Paying."

MR. BERNSTEIN: Thank you. Go ahead.

BY MR. GAFFEY:

**Q. Were there any discussions with Barclays about what implied interest rate would be applied in the reverse repo?**

A. Not that I was aware of.

**Q. When you referred to the Schedule A a moment ago, is that -- could you describe for me what you meant by Schedule A?**

A. In financing transactions, any counterparty that's extending cash against collateral would specify what are the haircuts that apply to any piece of collateral that they would be willing to lend against to protect them in the event that that collateral needed to be

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sold out and they would realize their cash as a result of that sale.

So there is standard haircuts that operate across the marketplace, and in certain cases individual institutions would adjust their haircuts relative to the standards that prevailed in the marketplace, and that tends to get characterized on a schedule that is just called the Schedule A. So I am using shorthand for that.

**Q. When you refer to a haircut, just to try to put this in layman's terms, the haircut is the difference between the value of the security used as collateral and the amount at which the purchaser will pay for it on the first leg of the repo, yes?**

A. It is the difference between the amount of cash that somebody is willing to extend to a given collateral value. So if there is, you know, \$100 worth of government bonds, they would be willing to, just to make the point, extend \$99 of cash, because in the event that they -- the repo had to get canceled, they would take the government bonds and they would have to sell those government bonds to recover the 99 of cash that

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they extended, and there is always uncertainty in what you can sell collateral for in the marketplace, even if it is very liquid collateral, and the haircuts would tend to be larger for less liquid security.

**Q. What was the mechanism by which the collateral underlying the fed repo was valued?**

A. Well, within triparty, the triparty agent, so in the case of the fed repo, JP Morgan Chase maintains as part of their triparty service a pricing mechanism for the collateral that's being funded on behalf of, in our case, Lehman with the various funding counterparties, so that pricing is part of the triparty service, so that that pricing would have been provided by JP Morgan Chase in the example of the Fed repo.

**Q. Do you know if there was any comparison made between the pricing that JP Morgan Chase applied in the triparty and the values ascribed to the particular securities as collateral on Lehman's books?**

A. Well, these would be, you know, liquid securities, so the pricing, one would expect the pricing to be the same or very similar. I



<p style="text-align: right;">Page 30</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 wouldn't imagine that there would be sources of</p> <p>3 difference.</p> <p>4 Q. Thanks.</p> <p>5 Was there a comparison made, do you</p> <p>6 know?</p> <p>7 A. I'm not aware of a specific</p> <p>8 comparison.</p> <p>9 Q. Was there anything else that you did</p> <p>10 in connection with arranging the repurchase -- for</p> <p>11 Barclays to take over the Fed repo?</p> <p>12 A. Nothing that I recall specifically</p> <p>13 that we haven't talked about already.</p> <p>14 Q. Did you consider it part of your</p> <p>15 duties in the course of doing that work to protect</p> <p>16 the interest of Lehman?</p> <p>17 MR. BERNSTEIN: Objection, vague and</p> <p>18 ambiguous.</p> <p>19 A. I saw myself as having to support</p> <p>20 Lehman Brothers and do the -- and I was an</p> <p>21 employee of Lehman Brothers at that point, so yes.</p> <p>22 (Exhibit 216, document Bates stamped</p> <p>23 BCI-EX77335 through 37 marked for</p> <p>24 identification, as of this date.)</p> <p>25 Q. Mr. Lowitt, I have put before you what</p>	<p style="text-align: right;">Page 31</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 we have marked as Exhibit 216. Do you recognize</p> <p>3 the document?</p> <p>4 A. I do.</p> <p>5 Q. Is that your employment agreement with</p> <p>6 Barclays?</p> <p>7 A. I don't know if it is an employment</p> <p>8 agreement. It is certainly the offer that I got</p> <p>9 from Barclays that I signed on the 18th that we</p> <p>10 talked about. I guess I'm just not sure what</p> <p>11 employment contract means, but yes, it is the</p> <p>12 agreement that I signed with Barclays.</p> <p>13 Q. Well, in this document, you agree to</p> <p>14 work with Barclays and they agree to pay you a</p> <p>15 certain amount of money, correct?</p> <p>16 A. Yeah, I did sign the document.</p> <p>17 Q. And you understood it to be an</p> <p>18 agreement by you to work for Barclays, and an</p> <p>19 agreement by Barclays to pay you a certain amount</p> <p>20 of money for that, correct?</p> <p>21 MR. BERNSTEIN: Objection,</p> <p>22 misrepresents the document.</p> <p>23 A. It is an offer to join Barclays</p> <p>24 Capital. It is subject to the transaction</p> <p>25 closing. It specifies duties and responsibilities</p>
<p style="text-align: right;">Page 32</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 that are consistent with my present duties with</p> <p>3 Lehman Brothers. That was what I understood that</p> <p>4 I was signing.</p> <p>5 Q. OK. And the date on your signature on</p> <p>6 the third page, 18 September, is that the date on</p> <p>7 which you signed this offer?</p> <p>8 A. I believe it is.</p> <p>9 Q. Did you think there was any conflict</p> <p>10 between your obligations to protect the interests</p> <p>11 of Lehman through the rest of the week and the</p> <p>12 fact that you were under -- you had accepted an</p> <p>13 offer from Barclays for employment for which you</p> <p>14 would be paid in excess of \$10 million?</p> <p>15 A. Well, I -- I don't -- the \$10 million,</p> <p>16 I'm not sure how you are getting to that. There</p> <p>17 were a lot of things that needed to happen for me</p> <p>18 to receive payment, including remaining with</p> <p>19 Barclays through sort of the time when bonuses</p> <p>20 were paid, to get initial payment of, what I see</p> <p>21 here is \$4.560 million, and then I would need to</p> <p>22 remain employed with Barclays through the</p> <p>23 anniversary dates to get the special cash awards.</p> <p>24 So those were the numbers of what I</p> <p>25 was expecting to get paid. I knew that this was</p>	<p style="text-align: right;">Page 33</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 conditional on the transaction closing. And until</p> <p>3 that point, I remained an employee of Lehman</p> <p>4 Brothers.</p> <p>5 Q. My question is -- let me rephrase the</p> <p>6 question a bit.</p> <p>7 Did you see any conflict between your</p> <p>8 obligations during the week between the 15th and</p> <p>9 the 22nd to protect the interests of Lehman in the</p> <p>10 fact on the 18th of September you had an agreement</p> <p>11 signed with Barclays where you stood to be paid up</p> <p>12 to \$10 million over the next two years?</p> <p>13 A. I recognize that in that week, I was</p> <p>14 an employee of Lehman Brothers, I was working</p> <p>15 to -- in the interests of -- I was working in the</p> <p>16 interests of Lehman Brothers. If a transaction</p> <p>17 did occur, then I had an opportunity to join</p> <p>18 Barclays and contribute to Barclays and get paid</p> <p>19 by Barclays.</p> <p>20 Q. And if the transaction with Barclays</p> <p>21 had not closed, what were Lehman's prospects?</p> <p>22 A. Oh, I think that Lehman -- I don't</p> <p>23 know -- it is pure speculation on my part, but it</p> <p>24 would have been difficult to see how Lehman would</p> <p>25 have, you know, continued to operate. I mean post</p>

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 the bankruptcy, the objective was to wind down LBI  
3 in an orderly fashion. Whether one could in fact  
4 have wound it down in an orderly fashion given how  
5 much turmoil there was in the market the week  
6 after the bankruptcy filing in the absence of the  
7 transaction I think has to be seen as quite  
8 unlikely.

9 Q. And you would have lost your job?

10 A. I would not have been employed by  
11 Lehman. I mean possibly, as others, would have,  
12 you know, joined the estate in assisting with the  
13 wind-down of the remaining positions as other  
14 folks did. But --

15 Q. Was it your view you could make that  
16 amount of money working for the estate?

17 A. I really wasn't focused on how much  
18 money I was potentially going to make if I stayed  
19 at Barclays (sic) through the course of that week.  
20 I was working to see if we could -- we could get a  
21 transaction with Barclays which we all believed  
22 were in the interests of our employees and all the  
23 participants, including the creditors.

24 Q. Did you discuss with anyone whether  
25 the fact that you had a signed offer letter with

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Barclays on September 18 presented a conflict in  
3 your duties?

4 A. There were people within Lehman who  
5 obviously knew that I was one of the eight, and  
6 given that I wasn't involved in the negotiation, I  
7 didn't feel a specific conflict.

8 Q. Thank you.

9 Let's go back to the negotiations, all  
10 right. I want to, just to frame this for a time  
11 period point, I want to go back to the Monday,  
12 which is when I think you told me you first spoke  
13 to Mr. McDade about the fact there were renewed  
14 negotiations with Barclays. That was the Monday,  
15 correct?

16 A. That is correct.

17 Q. What is your understanding of what  
18 happened next between the Monday and the Tuesday?

19 A. Well, in the Monday evening, you know,  
20 a number of Barclays folks came to meet with their  
21 counterparts at Lehman to understand, you know,  
22 what was the inventory and the assets in the firm.  
23 And then there were, you know, groups of folks who  
24 were also involved that evening in crafting a  
25 deal.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. And can you tell me who were the  
3 Barclays folks who came to meet with your  
4 counterparts at Lehman to understand what was the  
5 inventory and assets in the firm?

6 A. I don't know the names of all of them.  
7 But the -- you know, the head of interest rates  
8 would have met with the head of interest rates at  
9 Lehman, and the head of credit would have, you  
10 know, met with Eric Felder, for example.

11 Q. Can you give me a roster of who was  
12 involved in the Lehman side on this activity?

13 A. I think the people -- not a complete  
14 list, but it would have included Mike Gelband, who  
15 was the head of capital markets. It would have  
16 included Alex Kirk, and it would have included  
17 Eric Felder.

18 There may well have been others, but  
19 those three I'm sure were involved.

20 Q. Did any of them meet with you, any of  
21 the Barclays people meet with you at that point?  
22 I'm on the Monday into the Tuesday.

23 A. I mean I met with Rich Richie. I --  
24 there were some meetings -- I wouldn't say a  
25 meeting, but sort of contact where we were --

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 where I was introducing some of the Barclays  
3 people to some of the Lehman people.

4 I mean I recall one situation where  
5 there was one asset that the Barclays folks  
6 weren't sure what it was, and the person who was  
7 in a position to explain it was Jim Seery, so I  
8 put the Barclays person, whose name I can't  
9 recall, in contact with Jim to understand the  
10 particular asset.

11 Q. And did any of the people who worked  
12 directly for you, who were your direct reports or  
13 people who reported to them, were they involved in  
14 these meetings with the Barclays folks to  
15 understand the inventory and assets of the firm?

16 A. I don't know. You know, Jerry Reilly,  
17 who was the head of product control, may well have  
18 been involved in some of those meetings, given  
19 that he was knowledgeable about some of the  
20 assets, but I'm not aware specifically of any of  
21 my reports meeting specifically with people  
22 specifically at Barclays, but they may well have.

23 Q. When you met with Mr. Richie, you  
24 talked about the fact that you were one of the  
25 eight and that he wanted you at Barclays. Did you

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **talk about anything else?**  
3 A. I don't recall talking about other  
4 things.  
5 **Q. Did there come a time when you learned**  
6 **that an agreement of terms had been reached**  
7 **between Lehman and Barclays?**  
8 A. Well, there were, you know, a number  
9 of us waiting in the morning of Tuesday to hear  
10 that terms had been reached between the two firms,  
11 and at some point on the Tuesday morning, I was  
12 aware that a deal between the two firms had, in  
13 fact, been reached.  
14 **Q. How did you become aware of the fact**  
15 **that a deal between the two firms had been**  
16 **reached?**  
17 A. I can't recall precisely. I imagine  
18 somebody who was in the room negotiating would  
19 have come out and shared with, you know, the  
20 senior Lehman folks who were waiting on the 32nd  
21 floor that that had taken place, but I can't be  
22 more specific in my recollection.  
23 **Q. Who were the senior Lehman folks who**  
24 **were waiting on the 32nd floor to learn whether an**  
25 **agreement had been reached?**

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2 up assets and liabilities, and again a number of  
3 folks in Lehman were involved in that effort.  
4 **Q. And what were you doing? What were**  
5 **your activities? You described that there were**  
6 **teams looking at assets and teams looking at**  
7 **liabilities. I want to get a sense of what you**  
8 **were doing over the night from Monday to Tuesday,**  
9 **from the 15th to the 16th.**  
10 A. Well, part of what I was doing was  
11 meeting with some of the -- as I indicated, you  
12 know, introducing some of the Barclays folks to  
13 Lehman folks, and some part of what I was doing  
14 was, let's say maintaining a sense of where those  
15 discussions were coming out. And that's mostly  
16 what we were doing.  
17 **Q. And were those discussions that you**  
18 **refer to, when you say, talk about the discussions**  
19 **and how they were coming out, are those the**  
20 **discussions -- did they include what the value of**  
21 **the assets are that Barclays will purchase from**  
22 **Lehman?**  
23 A. Yeah. It included both -- you know,  
24 there were certain assets that as the Barclays  
25 folks understood them, they decided they would not

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. Well, it included -- my recollection  
3 is Skip McGee was there, Paul Parker. It would  
4 have involved, included some of the finance folks  
5 that had been working that evening. So Jerry  
6 Reilly, Martin Kelly.  
7 **Q. A tumultuous week for everybody. Are**  
8 **you there on the premises all night?**  
9 A. Yeah, I was.  
10 **Q. What were you doing, other than**  
11 **waiting?**  
12 A. I was involved in collecting the input  
13 that was being generated by different parties,  
14 vis-a-vis the assets that were, you know, going to  
15 be part of the transaction.  
16 **Q. Tell me what you did in terms of**  
17 **collecting input that was generated by different**  
18 **parties vis-a-vis the assets that were going to be**  
19 **part of the transaction.**  
20 A. There were a number of people that  
21 were, you know, involved in that. There was  
22 obviously input from the various business teams  
23 with regard to which assets the Barclays folks  
24 were interested in purchasing and which ones they  
25 weren't. There was, you know, an effort to match

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2 want to purchase them, and then there were also,  
3 as one would expect, if you were buying big blocks  
4 of assets, that you would -- that the price that  
5 you would offer to purchase those big blocks of  
6 assets would be less than what those assets were  
7 trading in the marketplace at that point in time.  
8 **Q. Did Lehman's books at that time fairly**  
9 **reflect the value of the assets according to how**  
10 **they were trading at the time?**  
11 A. Yes, I believe they did.  
12 **Q. So it was your understanding on the**  
13 **15th and the 16th of September of 2008, that**  
14 **Lehman's books carried accurate marks for**  
15 **securities that were recorded therein; is that**  
16 **correct?**  
17 A. Yeah. The assets that were on  
18 Lehman's books were, particularly LBI, were  
19 securities, and securities are priced based on,  
20 you know, market sources, and our books and  
21 records were accurate.  
22 **Q. And as CFO, you were comfortable with**  
23 **the fact that Lehman's books and records were**  
24 **accurate; is that right?**  
25 A. There is obviously an enormous process

<p style="text-align: right;">Page 42</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 that finance goes through and business goes</p> <p>3 through to validate those prices, and I had</p> <p>4 confidence in that process to establish the</p> <p>5 pricing.</p> <p>6 <b>Q. Do you know if -- when you learned on</b></p> <p>7 <b>the Tuesday morning that there was a deal, what is</b></p> <p>8 <b>your memory of the terms that you learned?</b></p> <p>9 A. I didn't know all of the -- I wasn't</p> <p>10 party to all of the terms. You know, I was aware</p> <p>11 that the -- that Barclays was going to purchase a</p> <p>12 substantial block of assets for less than the</p> <p>13 amount that we had on our books to reflect a sort</p> <p>14 of bid offer that reflected both the size of the</p> <p>15 purchase, as well as the inherent volatility in</p> <p>16 the market, which was significant that week.</p> <p>17 <b>Q. So was Barclays agreeing to buy the</b></p> <p>18 <b>assets at a fixed discount?</b></p> <p>19 MR. HUME: Objection, vague and</p> <p>20 ambiguous.</p> <p>21 A. Barclays were going to purchase the</p> <p>22 assets at a price they were willing to pay to</p> <p>23 purchase a substantial block of assets at a time</p> <p>24 that was tumultuous in the marketplace. That</p> <p>25 amount was less than the amount that those assets</p>	<p style="text-align: right;">Page 43</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 were on our books for.</p> <p>3 <b>Q. Was it a discount from the amount</b></p> <p>4 <b>shown on Lehman's books?</b></p> <p>5 MR. HUME: Same objection.</p> <p>6 A. You keep asking whether it was a</p> <p>7 discount. It was an amount that was less than the</p> <p>8 amount that we had it on our books for, which</p> <p>9 reflected a bid offer that was consistent with the</p> <p>10 size of the purchase, as well as the volatility in</p> <p>11 the marketplace.</p> <p>12 <b>Q. Is there a reason you are not</b></p> <p>13 <b>agreeable to the term "discount" to describe that?</b></p> <p>14 A. I think my explanation of it is more</p> <p>15 accurate. The shorthand for it could be discount.</p> <p>16 I think that it is important to reflect that the</p> <p>17 marks that we had on our books were accurate,</p> <p>18 which I believe was the case, as well as the fact</p> <p>19 that if you are going to sell a very substantial</p> <p>20 block of assets, you sell it for an amount, or</p> <p>21 somebody is going to pay you less than the amount</p> <p>22 that you actually have it on your books for.</p> <p>23 <b>Q. If someone is going to pay you less</b></p> <p>24 <b>than the amount that you have it on your books</b></p> <p>25 <b>for, you would expect that to be recorded in the</b></p>
<p style="text-align: right;">Page 44</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 <b>agreement for that transaction; is that correct?</b></p> <p>3 MR. HUME: Objection, lacks</p> <p>4 foundation.</p> <p>5 A. The -- my understanding of the</p> <p>6 transaction was that it included that feature, and</p> <p>7 how it was reflected in any agreement is not</p> <p>8 something that I know about.</p> <p>9 <b>Q. Tell me what you know about the</b></p> <p>10 <b>process by which this difference between the</b></p> <p>11 <b>amount shown on Lehman's books and the amount</b></p> <p>12 <b>Barclays would pay was determined.</b></p> <p>13 A. I think it was a combination of what I</p> <p>14 term sort of bottom up, as the Barclays folks met</p> <p>15 with the Lehman folks and looked at the assets</p> <p>16 specifically, as well as, you know, a top-down</p> <p>17 view that, you know, emerged from the negotiation</p> <p>18 between Lehman and Barclays.</p> <p>19 <b>Q. This may be an inartful question, but</b></p> <p>20 <b>what ultimately governed the decision as to the</b></p> <p>21 <b>amount of the difference between the amount shown</b></p> <p>22 <b>on Lehman's books and the price paid? The</b></p> <p>23 <b>bottom-up process or the top-down view?</b></p> <p>24 MR. HUME: Objection, lacks</p> <p>25 foundation.</p>	<p style="text-align: right;">Page 45</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 A. I mean it is hard for me to say. I</p> <p>3 wasn't part of the discussion. But I would say</p> <p>4 that the bottoms-up view would have informed what</p> <p>5 was going on inside the negotiating room, but that</p> <p>6 in the end, it must have been what was agreed to</p> <p>7 between the parties in their negotiating sessions.</p> <p>8 <b>Q. Do you know if what was agreed to</b></p> <p>9 <b>between the parties in their negotiating session</b></p> <p>10 <b>with regard to this difference between the amount</b></p> <p>11 <b>shown on the books and the price paid was an</b></p> <p>12 <b>agreement in terms of a percentage of what was</b></p> <p>13 <b>shown in the amount of the books or a raw number?</b></p> <p>14 A. My recollection is that it was a</p> <p>15 number, not a percentage.</p> <p>16 <b>Q. What was the number?</b></p> <p>17 A. My recollection is it was \$5 billion.</p> <p>18 <b>Q. And do you know how that \$5 billion</b></p> <p>19 <b>number was calculated? How it was generated?</b></p> <p>20 MR. BERNSTEIN: Objection, asked and</p> <p>21 answered.</p> <p>22 But you can answer it again.</p> <p>23 A. I don't know how it was derived, but I</p> <p>24 understand that if you were buying a big block of</p> <p>25 assets in one go in a very volatile market, you</p>

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2 would expect to have a fairly substantial bid  
3 offer spread associated with that purchase.  
4 Q. Again, it is something I will ask you  
5 in more detail as we go through the day, but to  
6 your understanding, sir, the deal changed in form  
7 over the week?  
8 A. Well, the deal that was consummated  
9 and approved by the judge was a completely  
10 different deal than the deal that was worked  
11 through on the Monday night/Tuesday morning.  
12 Q. I want to get up to the point -- when  
13 the deal is approved by the judge, it is at the  
14 hearing that takes place on Friday, the 19th? Can  
15 we agree on that? I am trying to put the date on  
16 that.  
17 A. We can agree on that.  
18 Q. That is all I want you to agree on, is  
19 the date.  
20 In addition to the Tuesday morning  
21 when you learn there is a deal and the hearing on  
22 the 19th, the repo arises, right? Barclays steps  
23 into the shoes of the Fed on the repo?  
24 A. The Fed insists on Barclays taking  
25 them out of the repo.

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2 off the collateral in order to get the cash back  
3 that they have extended.  
4 And so in a -- the repo that we did  
5 with Barclays was done in a way that was  
6 completely sort of market standard, and it did  
7 include the financing haircut that was typical,  
8 and so it is accurate that the transaction as it  
9 took place did include that Barclays received  
10 collateral for cash through the repo transaction.  
11 Q. And that --  
12 A. And there was a difference between the  
13 amount of repo and the cash proceeds, but they  
14 were different and not really related to the  
15 original transaction.  
16 Q. And the difference between the amount  
17 of the repo and the cash proceeds was  
18 approximately \$5 billion, correct?  
19 MR. HUME: Objection, lacks  
20 foundation.  
21 A. It, it -- I mean it was in that  
22 region.  
23 Q. Now, let's go back to the Tuesday  
24 morning when you learn about the deal. I may be  
25 treading on a few things you already told me.

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2 Q. For whatever reason, Barclays takes  
3 them out of the repo?  
4 A. Correct.  
5 Q. The repo ultimately plays a role in  
6 the transaction, correct?  
7 MR. HUME: Objection, vague and  
8 ambiguous.  
9 Q. The deal ultimately becomes giving to  
10 Barclays the collateral that's in the repo, yes?  
11 MR. BERNSTEIN: Objection, vague and  
12 ambiguous.  
13 A. The deal was that Barclays would keep  
14 the collateral that was in the repo, and those  
15 were the assets that Barclays was going to take as  
16 part of the transaction.  
17 Q. And the \$5 billion number we talked  
18 about before, did that number stay in the deal  
19 through its various iterations?  
20 A. Well, the repo transaction was just a  
21 different thing. As we discussed earlier, you  
22 know, the standard repo construct is one where a  
23 lender extends less cash than the amount of  
24 collateral they receive to protect them in the  
25 event that they have to cancel that repo and sell

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2 You learn about it from -- I just  
3 forget if I asked you this. From whom did you  
4 learn about the terms of the deal?  
5 A. As I said earlier, I didn't recall  
6 specifically. It was part of a group of us  
7 waiting to hear and we heard simultaneously.  
8 Q. And where were you when you heard  
9 about the terms of the deal simultaneously?  
10 A. We were on the 32nd floor of 745.  
11 Q. And this was very early in the morning  
12 of Tuesday?  
13 A. I don't think it was very early in the  
14 morning. Again, I don't have a precise  
15 recollection, but I think that this continued  
16 through the morning.  
17 Q. Did there come a time when you  
18 attended a meeting of the boards of Lehman  
19 Brothers Holdings, Inc. and Lehman Brothers, Inc.  
20 on the morning of Tuesday, September 16?  
21 A. I don't recall attending a board  
22 meeting on the Tuesday.  
23 Q. No recollection of that at all?  
24 A. I don't. I was very tired, so I --  
25 it's possible, but I have no recollection of it.

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2 Q. Do you have any recollection of the

3 deal being described to the board by anybody?

4 A. I don't have a recollection of being

5 at a meeting of the board, so, no.

6 Q. Do you ever learn one way or another,

7 whether you attended or not, whether the deal had

8 been described to the board?

9 A. I mean I would have assumed it would

10 have been presented to the board and approved.

11 But I wasn't aware of anything specific to it, or

12 I don't recall being aware of anything specific to

13 it, but I would have expected that it would have

14 been presented to the board.

15 Q. Did there come a time when the

16 agreement between Lehman and Barclays was reduced

17 to a written contract?

18 A. Well, I know there was a contract that

19 was worked on on the Tuesday, and I know that

20 there was, you know, various clarifications that

21 were made to that, but I wasn't involved in the

22 drafting or commenting, you know, of that.

23 Q. At any point during the week?

24 A. At any point during the week.

25 Q. Did you ever see the contract that was

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2 A. I have seen it as part of my meetings

3 with my counsel.

4 Q. Apart from meetings you may have had

5 to prepare for your deposition, have you ever seen

6 the document before?

7 A. I didn't read it ahead of this, no.

8 Q. I am asking a different question.

9 Putting aside what documents you may have reviewed

10 with counsel --

11 A. Right.

12 Q. -- to prepare for your deposition,

13 independently of that activity, have you ever seen

14 the document marked as Exhibit 1 before?

15 A. I don't recall having seen the

16 document before that.

17 Q. You learned that there was a written

18 agreement between Lehman and Barclays, yes?

19 A. Yes.

20 Q. Did you ever ask to see it at the

21 time?

22 A. I was -- I don't recall asking to see

23 it at the time.

24 Q. Did any of your activities in the

25 ensuing week require you to understand the terms

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2 first agreed?

3 A. I don't recall I did.

4 Q. I am sorry?

5 A. I don't recall that I did.

6 Q. I just need to press that a little

7 bit. You don't recall seeing it or you don't

8 recall whether or not you saw it?

9 A. I don't recall seeing the contract.

10 Q. This might be quite an event for you.

11 I am about to show it to you.

12 A. Can I take a quick break? Is that OK?

13 Q. Sure.

14 A. Thank you. Very quick.

15 (Recess)

16 BY MR. GAFFEY:

17 Q. Mr. Lowitt, I have put before you what

18 we have marked as Exhibit 1 at a prior deposition,

19 a document entitled Asset Purchase Agreement among

20 Lehman Brothers Holdings, Inc., Lehman Brothers,

21 Inc., LB745 LLC, and Barclays Capital, Inc., dated

22 as of September 16, 2008.

23 Would you look through the document,

24 sir, sufficiently to tell me whether you have ever

25 seen it before.

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2 of the agreement?

3 A. I don't believe they did.

4 Q. When you learned the terms of the

5 agreement, sir, without regard to the exhibit I

6 gave you, when you learned the terms of the

7 agreement, did you also learn that Barclays would,

8 as part of the deal, assume certain liabilities?

9 A. I mean my understanding of the

10 transaction was that Barclays was going to assume

11 additional liabilities in addition to the sort of

12 asset liability -- the work around the individual

13 assets and the liabilities associated with those.

14 Q. Did you come to understand that in the

15 deal there would be an extra \$1 billion of

16 compensation beyond Lehman's accrual?

17 A. I mean I was aware that the

18 compensation liability that Barclays was taking on

19 was \$2 billion.

20 Q. Did you understand that to be

21 \$1 billion beyond Lehman's accrual?

22 A. Well, I understood it to be the total

23 compensation, which as we would have thought about

24 it at Lehman would have included both a cash

25 component and a stock component.

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2 **Q. Was it \$1 billion above the accrual**

3 **that Lehman had for those components?**

4 A. We would not have accrued for the

5 stock component of compensation that was granted

6 in -- at the end of that year. We would have been

7 accruing for that over the five years, three or

8 five years that that stock was vesting.

9 So the accrual would have been for the

10 bonus, and then in addition to that, away from the

11 bonus accrual, we had expensed the cost of the

12 prior equity awards that were continuing to vest

13 through 2008. So compensation that was included

14 in the 2 billion would have been more than just

15 the bonus piece, it would also have, in my mind,

16 included a component that would have been stock.

17 **Q. Now, putting before you, Mr. Lowitt,**

18 **what has previously been marked as Exhibit 24 and**

19 **what has previously been marked as Exhibit 25.**

20 **And with respect to those two documents, sir, I'll**

21 **ask you the same question. Take a look through**

22 **them sufficiently to tell me whether you have seen**

23 **them before.**

24 A. I don't believe I've seen either of

25 these documents before.

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2 **Amendment to the asset purchase agreement?**

3 A. No.

4 **Q. You knew generally at the time -- and**

5 **by the time, I mean the week between the 15th and**

6 **22nd, that there were changes in the deal that**

7 **were memorialized in some way, correct?**

8 A. Yes.

9 **Q. Did you ever ask to see the writings**

10 **that memorialized those changes in the deal?**

11 A. I don't recall ever asking to see

12 those.

13 **Q. To conduct the activities you were**

14 **conducting in connection with the deal, did you**

15 **think you needed to understand or see the written**

16 **terms of the deal?**

17 MR. BERNSTEIN: Objection. Compound.

18 A. I -- I don't believe I -- I didn't ask

19 to see it, so I felt -- I believe I would have

20 felt competent to fulfill my duties without having

21 read it.

22 **Q. Did you attend any of the hearings**

23 **before the bankruptcy court concerning the**

24 **transaction?**

25 A. I did not.

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2 **Q. Now, Exhibit 24 is a First Amendment**

3 **to the asset purchase agreement, and Exhibit 25 is**

4 **a letter dated as of September 20, which has come**

5 **to be called the clarification letter. Have you**

6 **heard that term before?**

7 A. I have.

8 **Q. And when did you hear the term**

9 **"clarification letter" in connection with the**

10 **transaction between Lehman and Barclays?**

11 A. I would have heard of the

12 clarification letter actually subsequent to the

13 transaction closing, is my recollection.

14 **Q. How long after the transaction closed**

15 **did you first hear about the clarification letter?**

16 A. My recollection around that is hazy,

17 but it would have been a few weeks, probably

18 within a few weeks of the transaction closing that

19 there was a clarification letter.

20 **Q. Do you remember anything about the**

21 **circumstances under which you learned a few weeks**

22 **after the closing about a clarification letter?**

23 A. No.

24 **Q. Did you -- until I have shown it to**

25 **you today, did you ever know there was a First**

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2 **Q. Did you have reports from anyone who**

3 **did attend the hearings before the bankruptcy**

4 **court about the transaction, about what was going**

5 **on at the hearings?**

6 A. I recall having conversations with

7 Steve Berkenfeld on the weekend after the 7th --

8 the Friday evening, about it, but don't have

9 recollection of specific details of that

10 conversation.

11 **Q. Do you have a general recollection of**

12 **what Mr. Berkenfeld was recounting to you in those**

13 **conversations about the hearing?**

14 MR. BERNSTEIN: Is Lehman --

15 Mr. Berkenfeld, as I understand it, was a

16 Lehman lawyer. Is everyone comfortable

17 waiving the privilege?

18 MR. GAFFEY: Mr. Berkenfeld was not

19 acting as a lawyer at that time, so it is

20 not a waiver of privilege.

21 MR. BERNSTEIN: No one is going to

22 assert that this witness is violating the

23 privilege by answering this question. There

24 are lots of constituents around the table.

25 MR. GAFFEY: I'm not. I'm not going

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 to --  
3 MR. BERNSTEIN: If anyone is going to  
4 assert that, they need to assert that now.  
5 MR. GAFFEY: I am not going to assert  
6 that.  
7 MR. HUME: Barclays may assert that  
8 Berkenfeld was acting as a lawyer and this  
9 is waiving the privilege. At least we  
10 reserve the right to reserve that.  
11 MR. GAFFEY: I would disagree with  
12 that.  
13 Q. Could you answer the question, please.  
14 A. Could you --  
15 Q. Do you recall generally what  
16 Berkenfeld told you about the hearing when he  
17 spoke to you after the -- over the weekend after  
18 the hearing had taken place?  
19 A. I think he was recounting the broad  
20 narrative of how it had proceeded without giving  
21 very specific details of what had actually  
22 transpired. But again my recollection of it is  
23 low on sort of detail. I just recall having that  
24 conversation with him.  
25 Q. Before our break in one of your

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2 aware of those.  
3 Q. And what, as best you recall, is the  
4 value of those additional elements, dollar value?  
5 A. The dollar value of the unencumbered  
6 collateral was in and around \$2 billion, and, you  
7 know, the 15c3 excess, my understanding of the  
8 deal that was reached vis-a-vis the 15c3 excess  
9 was around 750 to 800 million dollars.  
10 Q. And why, why was -- why were different  
11 sources of values being identified on the Friday  
12 to be transferred to Barclays?  
13 A. I mean I was asked to identify  
14 potential sources of value by Bart and by Rich. I  
15 wasn't part of the discussions of why that was  
16 necessary.  
17 Q. By Rich, do you mean Mr. Richie?  
18 A. Rich Richie. I am sorry. Mr. Richie.  
19 Q. What did Mr. Richie say to you about  
20 identifying different sources of value?  
21 A. Just that we needed to identify those,  
22 we, Lehman, needed to go and identify where there  
23 were different sources of value and what those  
24 would be.  
25 Q. And do you remember anything else

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 answers you mentioned that the deal that was  
3 approved by the court at the hearing was a  
4 different deal than the one that had been reached  
5 on the Tuesday. Do you recall that?  
6 A. I do.  
7 Q. How did you learn that the deal that  
8 was approved by the court was a different deal  
9 than the one that had been reached on Tuesday?  
10 A. Well, there were -- as specific  
11 examples, you know, the work that we had done on  
12 the Friday to identify additional sources of value  
13 for the transaction were clearly elements that  
14 were included in the final transaction which were  
15 not part of the transaction that was discussed on  
16 the Monday and Tuesday.  
17 Q. What were the different sources of  
18 value that were identified on the Friday?  
19 A. There was a 15c3 lock-up excess and  
20 unencumbered collateral in LBI.  
21 Q. Anything else?  
22 A. I wasn't party to all the elements of  
23 what went into the transaction, but I was aware of  
24 the work that we did on, you know, those elements.  
25 So there may have been others, but certainly I was

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 about what Mr. Richie said about identifying  
3 additional sources of value?  
4 A. I don't recall additional details of  
5 that conversation, no.  
6 Q. Describe the setting in which  
7 Mr. Richie told you that Lehman needed to identify  
8 additional sources of value. Meeting, phone call?  
9 A. It was a meeting. I had an office on  
10 the 31st floor, Rich had an office that he was  
11 operating out of on the 31st floor, so we would  
12 have -- I can't recall precisely where we met, but  
13 we met probably somewhere on the 31st floor.  
14 Q. Was anyone else present when you had  
15 this conversation with Mr. Richie?  
16 A. I don't believe anybody else was  
17 present.  
18 Q. Did you have the conversation with  
19 Mr. Richie before or after you had a conversation  
20 with Bart McDade about identifying additional  
21 sources of value?  
22 A. I can't be certain, but I believe it  
23 was after I spoke with Bart.  
24 Q. So was Bart McDade the first person  
25 who discussed with you identifying additional



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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **sources of value?**  
3 A. I believe that to be the case.  
4 **Q. Was anyone else present when you had**  
5 **this conversation with Bart McDade?**  
6 A. I don't recall anybody else being  
7 present.  
8 **Q. As best you remember, what did**  
9 **Mr. McDade say to you about finding additional**  
10 **sources of value?**  
11 A. I don't have a specific recollection  
12 of the conversation, but I would -- I would expect  
13 that he would have asked me where, if anywhere,  
14 were there additional sources of value we could  
15 include in a new transaction.  
16 **Q. Did Mr. McDade give you a target**  
17 **number for additional sources of value? How much**  
18 **he needed to find?**  
19 A. My recollection is between 3 and 4  
20 billion dollars.  
21 **Q. Did you ask him why you needed to find**  
22 **3 to 4 billion dollars in additional value on that**  
23 **Friday?**  
24 A. I don't recall the details of that  
25 conversation, so I can't be clear on whether I did

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2 **important to the transaction?**  
3 MR. HUME: Objection, vague and  
4 ambiguous.  
5 A. I don't recall how I was thinking  
6 about it. I know that I worked hard on it, you  
7 know, on the Friday and into the weekend. So I  
8 would have thought it was important.  
9 **Q. Did you express to anyone you were**  
10 **working with in this endeavor to find 3 to 4**  
11 **billion dollars in additional value that it was**  
12 **critical to the deal?**  
13 A. I don't recall expressing that to  
14 people, but it was obviously, you know, an  
15 important exercise, an important element of, you  
16 know, the new transaction post the repo.  
17 **Q. What was your understanding of why it**  
18 **was an important element of the new transaction**  
19 **post the repo?**  
20 A. I don't have specific recollection. I  
21 do know that there was -- it was a pretty  
22 tumultuous marketplace, and obviously the  
23 discussions between, you know, Barclays and  
24 Lehman, Barclays communicated to Lehman that it  
25 was important that this additional source of value

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 ask him about that or not.  
3 **Q. Without regard to the specific**  
4 **conversation, Mr. Lowitt, after you had these**  
5 **conversations, you spent a considerable amount of**  
6 **time that day looking for 3 to 4 billion dollars**  
7 **in additional value, correct?**  
8 A. That is correct.  
9 **Q. Who worked with you in that endeavor**  
10 **to find 3 to 4 billion dollars in additional**  
11 **value?**  
12 A. The main person I worked with on that  
13 was Paolo Tonucci, and we would have also included  
14 Jerry Reilly and probably Alastair Blackwell.  
15 **Q. Did you have an understanding as to**  
16 **whether finding an additional 3 to 4 billion**  
17 **dollars in additional value was important to the**  
18 **transaction?**  
19 A. I mean at some level, it needed to be  
20 important to the transaction or we wouldn't have  
21 been asked to find it.  
22 **Q. I agree with the inference, but it is**  
23 **a different question.**  
24 **My question is, is -- did you have an**  
25 **understanding at the time as to whether it was**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 was located.  
3 **Q. Do you know that as a matter of fact**  
4 **or as a matter of inference that Barclays**  
5 **communicated that to Lehman?**  
6 A. I know that as a matter of inference.  
7 I wasn't party to those discussions. Thank you  
8 for clarifying.  
9 **Q. Did anyone tell you that Barclays had**  
10 **communicated that it was important?**  
11 A. I don't recall anybody saying that  
12 specifically, but as I say, the fact that I was  
13 working on it, it was clear to me it was  
14 important.  
15 **Q. It can fairly be said that the work**  
16 **that you did on Friday into the weekend to find**  
17 **the additional value was a fairly intense**  
18 **activity, correct? There was a lot of effort**  
19 **being put into this, correct?**  
20 MR. BERNSTEIN: Objection, asked and  
21 answered.  
22 A. Yeah, we worked hard on Thursday into  
23 the weekend.  
24 **Q. Were you curious why you needed to**  
25 **find 3 to 4 billion dollars of additional value**

<p style="text-align: right;">Page 66</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2 <b>for the transaction post the repo?</b> 3       A. I mean the transaction had changed. 4 The circumstances in the marketplace were 5 tumultuous. It wasn't a great surprise to me that 6 Barclays was, given the risk they were taking on, 7 looking for additional value. 8       Q. Now, while you and these other 9 folks -- and Mr. Tonucchi and Mr. Reilly and 10 perhaps Mr. Blackwell and perhaps other folks, 11 were searching for 3 to 4 billion dollars in 12 additional value on that Friday, there was a 13 hearing in the afternoon going on down at the 14 bankruptcy court, correct? 15       A. That's correct. 16       Q. And you had no reports from the 17 hearing about what was going on? That's what you 18 told me, correct? 19       A. Yeah, I don't believe I was -- I 20 certainly wasn't getting updates of how things 21 were going in the meeting. 22       Q. Did you ever ask anyone if the judge 23 had addressed and approved the 15c3 issue? 24       A. I do know as a result of an e-mail 25 that I saw as part of my preparation for this</p>	<p style="text-align: right;">Page 67</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2 deposition that I had asked that of Bart. 3       Q. Did you get an answer from Bart? 4       A. I don't recall the specific 5 conversation that I had with Bart, but I'm sure I 6 did. 7       Q. Why were you asking Bart whether the 8 court had approved the 15c3 lock-up point? 9       A. We needed to sort of operationalize 10 the movement of collateral, if that was part of 11 the approved transaction, and so my interest was 12 in determining what we needed to do to get 13 ourselves ready to close on the transaction. 14       Q. My question is a bit more specific. 15       A. It is less than -- 15c3 lock-up would 16 have been something that would have resolved over 17 a period of time as the customer claims were being 18 addressed. It was really around the unencumbered 19 collateral that we would have needed to 20 operationalize ourselves. 21       Q. The 15c3 lock-up piece, let me be sure 22 I understand what you just said. As I understand 23 it, the reason it takes place over a period of 24 time is as trades settle and customer activity 25 takes place, you are able to realize how much is</p>
<p style="text-align: right;">Page 68</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2 <b>surplus in 15c3, correct?</b> 3       A. I don't know if it's so much trade 4 settling, but 15c3 lock-up is sort of a regulatory 5 requirement which establishes a set of rules 6 which, based on customer assets and how they are 7 custodied, determines an amount of excess that you 8 need to hold against that. 9       And it is only in sort of the unwind 10 of all of those customer positions that you can 11 determine whether there is excess as calculated 12 per the formula or whether the actual excess is a 13 different number. 14       Q. When you asked Bart whether the court 15 had approved this 15c3 component, did you think 16 the court needed to approve it before you could 17 operationalize transferring that to Barclays? 18       A. If-- if those elements were not part 19 of a deal, then obviously there was no requirement 20 to operationalize those. 21       Q. Was it your understanding that the 22 court needed to approve it for it to be part of 23 the deal? 24       MR. HUME: Objection, lacks 25 foundation. Calls for a legal conclusion.</p>	<p style="text-align: right;">Page 69</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2       A. All I wanted to know was whether we 3 needed to get ourselves set up on the Monday to 4 begin moving assets. 5       Q. So I guess my question is, why didn't 6 you ask Mr. McDade, should I send it, should I 7 operationalize it, as opposed to did the court 8 approve it? 9       A. I did understand that the court needed 10 to approve the transaction, and if the court had, 11 you know, not approved the transaction, then -- or 12 not approved elements of the transaction, then 13 there would have been no requirement to 14 operationalize it. 15       Q. And you were asking Mr. McDade in that 16 e-mail about whether the court had approved the 17 15c3 component specifically, correct? 18       MR. HUME: Objection, lacks 19 foundation. 20       MR. BERNSTEIN: Why don't we show him 21 the e-mail. 22       MR. GAFFEY: I want to get his 23 independent recollection first before it is 24 refreshed. 25       MR. BERNSTEIN: If you want to ask him</p>

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 specifically what he did in the e-mail, show</p> <p>3 him the e-mail.</p> <p>4 <b>Q. I think you can answer my question.</b></p> <p>5 A. Which is your question?</p> <p>6 MR. BERNSTEIN: You have the right if</p> <p>7 you're being asked about what a specific</p> <p>8 document says to see the document.</p> <p>9 THE WITNESS: OK.</p> <p>10 MR. GAFFEY: I'm not sure that's so.</p> <p>11 But let's not have that fight.</p> <p>12 <b>Q. Let me ask you this. Did you review</b></p> <p>13 <b>documents to prepare for your testimony today?</b></p> <p>14 A. I did.</p> <p>15 MR. BERNSTEIN: You can answer yes or</p> <p>16 no.</p> <p>17 A. Yes.</p> <p>18 <b>Q. And can you tell me whether any of the</b></p> <p>19 <b>documents that you reviewed had the effect of</b></p> <p>20 <b>refreshing your recollection about the events I am</b></p> <p>21 <b>asking you about?</b></p> <p>22 MR. BERNSTEIN: You can answer that</p> <p>23 yes or no.</p> <p>24 A. I am struggling with it because I'm</p> <p>25 not quite sure what -- of my ability to sort of</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 separate out if something refreshed it or not. In</p> <p>3 some cases it probably did.</p> <p>4 <b>Q. Can you tell me which documents had</b></p> <p>5 <b>that effect of refreshing your recollection of</b></p> <p>6 <b>events?</b></p> <p>7 A. I can't.</p> <p>8 <b>Q. Do you know when the agreement was</b></p> <p>9 <b>made -- do you know, sir, if the agreement with</b></p> <p>10 <b>Barclays was changed or amended to include the</b></p> <p>11 <b>unencumbered collateral -- unencumbered collateral</b></p> <p>12 <b>and the 15c3 lock-up?</b></p> <p>13 MR. HUME: Objection, vague and</p> <p>14 ambiguous and calls for a legal conclusion.</p> <p>15 MR. BERNSTEIN: I would add no</p> <p>16 foundation.</p> <p>17 A. I wasn't party to the negotiation of</p> <p>18 the deal, the writing of the contracts or what was</p> <p>19 presented to the court, so I'm not in a position</p> <p>20 to respond to that.</p> <p>21 <b>Q. Did you know at the time -- well,</b></p> <p>22 <b>withdrawn.</b></p> <p>23 <b>Do you know now whether the court was</b></p> <p>24 <b>told about the 15c3 lock-up and the unencumbered</b></p> <p>25 <b>collateral?</b></p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 MR. BERNSTEIN: You are asking him</p> <p>3 whether he knows from sources other than</p> <p>4 discussions with counsel what the court was</p> <p>5 told?</p> <p>6 <b>Q. Other than discussions with the</b></p> <p>7 <b>counsel representing you here today.</b></p> <p>8 A. I do not.</p> <p>9 <b>Q. Do you know if the \$5 billion</b></p> <p>10 <b>difference between the amount at which assets were</b></p> <p>11 <b>carried on Lehman's books and the amount Barclays</b></p> <p>12 <b>agreed to pay, back on Tuesday, was disclosed to</b></p> <p>13 <b>the court?</b></p> <p>14 MR. BERNSTEIN: Again you are asking</p> <p>15 for his knowledge other than his discussions</p> <p>16 with counsel?</p> <p>17 MR. GAFFEY: Counsel representing him</p> <p>18 here today.</p> <p>19 MR. BERNSTEIN: Counsel representing</p> <p>20 him, period.</p> <p>21 MR. GAFFEY: No, counsel representing</p> <p>22 him here today.</p> <p>23 MR. BERNSTEIN: My instruction is</p> <p>24 counsel representing him, period. We all</p> <p>25 have associates, et cetera.</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 MR. GAFFEY: OK, Willkie Farr or Boies</p> <p>3 Schiller, I will take all of them.</p> <p>4 MR. BERNSTEIN: Whoever his counsel</p> <p>5 is.</p> <p>6 MR. HUME: Or representing Barclays.</p> <p>7 MR. GAFFEY: Fine.</p> <p>8 A. Can you repeat the question.</p> <p>9 <b>Q. Apart from talking to your own lawyers</b></p> <p>10 <b>or lawyers from Barclays, do you know if the</b></p> <p>11 <b>\$5 billion difference between the amount at which</b></p> <p>12 <b>assets were carried on Lehman's books and the</b></p> <p>13 <b>amount Barclays agreed to pay, back on Tuesday,</b></p> <p>14 <b>was disclosed to the court?</b></p> <p>15 A. I don't know what was disclosed to the</p> <p>16 court, but I also would say that the transaction</p> <p>17 that was presented to the court was not the</p> <p>18 transaction that was the one that was agreed to on</p> <p>19 the Tuesday. It mutated, it was different as a</p> <p>20 result of sort of the repo and other factors.</p> <p>21 <b>Q. Did the deal mutate over the weekend</b></p> <p>22 <b>of the 21st -- of the 20th and 21st?</b></p> <p>23 A. Again, I'm not really in a position to</p> <p>24 say what happened because I'm not -- I don't know</p> <p>25 what was really agreed to on the Friday and what</p>

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 was presented to the court.  
3 **Q. Do you know -- whether you know the**  
4 **specific means in which it did, do you know**  
5 **whether the deal mutated over the weekend of the**  
6 **20th and 21st?**  
7 MR. BERNSTEIN: Objection, asked and  
8 answered.  
9 MR. HUME: Same objection, lacks  
10 foundation.  
11 A. Again, I just repeat the previous  
12 answer, which was I didn't know what exactly went  
13 into the deal on the Friday that was presented to  
14 the court, so I'm not in a position to say whether  
15 things changed. I wasn't party to the discussions  
16 even over the weekend around what would have or  
17 might have changed.  
18 **Q. Did you ever get an understanding of**  
19 **the components of the deal as it actually closed**  
20 **on the 22nd?**  
21 A. The 22nd is the --  
22 **Q. Is the Monday.**  
23 A. Is the Monday?  
24 MR. HUME: Excluding conversations  
25 with counsel.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 I never want you to disclose to me,  
3 unless I specifically ask you for it,  
4 anything that was disclosed to you by your  
5 counsel from Willkie Farr or counsel  
6 representing Barclays.  
7 Would that solve the problem so we  
8 don't have to solve it every time?  
9 MR. BERNSTEIN: It doesn't solve his  
10 problem. It has to be counsel, period.  
11 MR. HUME: First of all, what about  
12 in-house Barclays counsel? We are entitled  
13 to object and to instruct the witness.  
14 MR. GAFFEY: It will take longer.  
15 That's fine. I have all day.  
16 **Q. Do you have the question in mind?**  
17 A. Can you repeat it for me, please.  
18 (Record read)  
19 MR. BERNSTEIN: Again, you can answer  
20 the question except with reference to  
21 information you have obtained from either  
22 Barclays' counsel or your counsel.  
23 THE WITNESS: No, I understand.  
24 A. I had a sense of many but probably not  
25 all of the elements of the transaction.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 A. Well, I knew that there was a fairly  
3 detailed schedule which identified unencumbered  
4 collateral that was, you know, reviewed by the  
5 creditors' committee and was -- again I assumed,  
6 not that I knew, included what -- the deal that  
7 was agreed to with Barclays.  
8 **Q. When you refer there to unencumbered**  
9 **collateral, are you talking about the unencumbered**  
10 **collateral you were looking for on Friday?**  
11 A. Correct.  
12 **Q. My question is a little broader. Did**  
13 **you ever have an understanding of the overall**  
14 **terms of the deal that closed on Monday? What did**  
15 **Barclays get, what did Barclays pay?**  
16 MR. HUME: Again objection to the  
17 extent it calls for anything you learned  
18 from Barclays' lawyers or your own lawyers,  
19 I am instructing you on behalf of the  
20 company not to answer. Preserve the  
21 attorney/client privilege.  
22 MR. GAFFEY: I -- hold that thought.  
23 Let's see if we can save everybody some  
24 speechifying. That will be a standing  
25 instruction to the witness.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **Q. Describe for me what your sense was,**  
3 **what your understanding was.**  
4 A. So my sense was that it included the  
5 unencumbered collateral, it included the 15c3  
6 lock-up excess or a component of 15c3 lock-up  
7 excess, that it involved the cancellation of the  
8 repo, it involved making offers to -- of  
9 employment to legacy Lehman employees of LBI. It  
10 included the exchange -- the exchange derivative  
11 business and all the business -- the majority of  
12 the businesses of LBI.  
13 But again, the details of what was in  
14 and what was out, there were details there that I  
15 would not have been aware of.  
16 **Q. Do you know if in connection with the**  
17 **inclusion of the exchange derivative business any**  
18 **cash was transferred to Barclays?**  
19 A. Not aware.  
20 **Q. So the unencumbered collateral, if I**  
21 **have your testimony correctly, was approximately**  
22 **2 billion?**  
23 A. That's my recollection.  
24 **Q. And the 15c3 was approximately**  
25 **1 billion, correct?**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. I think my recollection was between  
3 750 and 800 million dollars.  
4 **Q. And the collateral on the repo was**  
5 **approximately 50 billion, correct?**  
6 MR. HUME: Objection, lacks  
7 foundation, vague and ambiguous.  
8 A. I believe it was in and around  
9 \$50 billion of collateral.  
10 **Q. So at least by my amateur math, my**  
11 **understanding, as I am adding it up, sir, tell me**  
12 **if I'm correct, your understanding is that**  
13 **Barclays got about \$52.8 billion in value?**  
14 MR. BERNSTEIN: Objection,  
15 mischaracterizes his testimony.  
16 A. There was individual components of the  
17 deal. I don't think you could adequately -- you  
18 can correctly stand them up as you have just done  
19 that. And you are just mixing different concepts  
20 together.  
21 **Q. Why don't you tell me what you think**  
22 **Barclays -- let me ask you this. In your**  
23 **understanding, was the deal structured in a way**  
24 **that Barclays would have an immediate gain on**  
25 **acquisition?**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **have an understanding or a view as to whether**  
3 **Barclays would enjoy immediate gain on the**  
4 **acquisition?**  
5 A. I had no sense of it.  
6 **Q. Mr. Lowitt, showing you what was**  
7 **marked at a prior deposition as Exhibit 19. Have**  
8 **you seen that document before?**  
9 A. I have.  
10 **Q. What do you recognize the document to**  
11 **be?**  
12 A. Monday night, Tuesday morning, we were  
13 tracking elements of the transaction and in  
14 particular the sort of net assets, the specific  
15 liabilities that we from a Lehman perspective  
16 understood that Barclays would be assuming in the  
17 transaction as it was conceived on the Monday and  
18 Tuesday period.  
19 **Q. Did you play any role in the drafting**  
20 **of the document we have marked as Exhibit 19?**  
21 A. I mean I can't recall precisely my  
22 role in this particular version, but I was  
23 certainly involved in the iterative work product  
24 that led up to this particular piece of paper.  
25 **Q. By iterative work product, are you**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. I didn't know how Barclays was going  
3 to account for the transaction, but it wouldn't  
4 have surprised me that Barclays was going to get  
5 some equity out of the transaction, given the  
6 risks that they were taking on.  
7 **Q. Describe what you mean by that, given**  
8 **the risks that they were taking on? Why would it**  
9 **not surprise you given the risks that they were**  
10 **taking on?**  
11 A. I think they were taking on at least  
12 two risks. One was that as they looked to sell  
13 off the collateral on the repo trade, that they  
14 couldn't sell it out for -- you know, within the  
15 amount of the financing haircut.  
16 And then the second risk is obviously,  
17 you know, any integration has a fair amount of  
18 risk, and they were going to employ, you know, a  
19 large number of Lehman people, and it was possible  
20 that they wouldn't have been successful in  
21 integrating all of those people and that the costs  
22 of those folks would have been more than they were  
23 generating in revenue.  
24 **Q. And at the time that the deal closed,**  
25 **again around the Monday, September 22nd, did you**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **talking about prior drafts of this -- withdrawn.**  
3 **What do you mean by iterative work**  
4 **product?**  
5 A. I believe there were earlier drafts of  
6 this as our understanding of what was going to  
7 constitute the transaction as we were getting a  
8 better sense of it through the morning of Tuesday.  
9 **Q. Now, on the asset side of this --**  
10 **withdrawn.**  
11 **On the asset side of this financial**  
12 **schedule, sir, there are descriptions of various**  
13 **asset classes. Do you see that? Government**  
14 **agency, commercial paper, et cetera?**  
15 A. I do see that.  
16 **Q. Are the amounts attributed to each of**  
17 **those asset classes -- withdrawn.**  
18 **Were the amounts attributed to each of**  
19 **those asset classes the values shown on Lehman's**  
20 **books for each of those asset classes?**  
21 A. My understanding of what was reflected  
22 in these asset values would be the amount that  
23 Barclays would be paying for assets in those asset  
24 categories.  
25 **Q. So that roughly \$5 billion number that**

<p style="text-align: right;">Page 82</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>we talked about before is recognized in this</b></p> <p>3 <b>document, Exhibit 19, correct?</b></p> <p>4 MR. BERNSTEIN: Objection, vague and</p> <p>5 ambiguous.</p> <p>6 A. It is not recognized in this, in the</p> <p>7 sense that these -- these asset numbers are post</p> <p>8 that -- reflect what Barclays were willing to pay</p> <p>9 for \$72 billion worth, \$72.65 billion worth of</p> <p>10 assets, which was less for reasons that we talked</p> <p>11 about earlier than the amount they were on</p> <p>12 Lehman's books for, and the amount less is</p> <p>13 probably the 5 billion that you referenced.</p> <p>14 Q. Now, you told me a moment ago, sir,</p> <p>15 there were various drafts of iterative work</p> <p>16 product that led to this final. Do you recall how</p> <p>17 many different drafts of it there were before this</p> <p>18 document was a result?</p> <p>19 A. I don't recall how many, but there</p> <p>20 were many, and that's -- just for clarification,</p> <p>21 you know, I'm not aware of why this is marked</p> <p>22 final, but there were a number of, you know, sort</p> <p>23 of iterations that led to whatever the final</p> <p>24 version of this thing was.</p> <p>25 Q. And when were these iterations being</p>	<p style="text-align: right;">Page 83</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>generated? Is this during Tuesday, the 16th?</b></p> <p>3 A. It would have started -- I can't say</p> <p>4 when it would have started, but it certainly would</p> <p>5 have continued through the morning of Tuesday.</p> <p>6 Q. May have started as early as --</p> <p>7 A. Monday evening.</p> <p>8 Q. Monday evening. OK.</p> <p>9 And who, if you know, was actually</p> <p>10 generating the document?</p> <p>11 A. Again, my recollection is that it was</p> <p>12 one of the Weil lawyers who had the spreadsheets</p> <p>13 on his computer, but I don't know the name of that</p> <p>14 person.</p> <p>15 Q. Do you -- can you describe that</p> <p>16 person?</p> <p>17 A. A reasonably young man, but I'm afraid</p> <p>18 I can't be more specific than that.</p> <p>19 Q. That would qualify every man in the</p> <p>20 room, sir. Can you give a more detailed</p> <p>21 description?</p> <p>22 MR. BERNSTEIN: I just want to correct</p> <p>23 that. It wouldn't describe everyone in the</p> <p>24 courtroom.</p> <p>25 Q. With the possible exception of Neil</p>
<p style="text-align: right;">Page 84</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Oxford, it would be everyone in the room.</b></p> <p>3 <b>Do you have a more detailed</b></p> <p>4 <b>description that you can give me, sir, than</b></p> <p>5 <b>fungible young associate at Weil Gotshal?</b></p> <p>6 A. I'm afraid I can't.</p> <p>7 Q. Did he have it on a laptop? Did he</p> <p>8 have it on a computer, a PC?</p> <p>9 A. I believe it was on a laptop that he</p> <p>10 had rather than a standing PC, just because he was</p> <p>11 in one of the dining rooms on the 32nd floor, so</p> <p>12 there aren't standing computers there. But that's</p> <p>13 based on my assumption rather than a specific</p> <p>14 recollection of whether it was a laptop or a</p> <p>15 computer.</p> <p>16 Q. How do you know he worked for Weil</p> <p>17 Gotshal?</p> <p>18 A. I can't be specific about how I knew.</p> <p>19 He wasn't somebody who was, you know, at Lehman,</p> <p>20 and he wasn't somebody at Barclays, but -- and my</p> <p>21 recollection is he was at Weil, but I</p> <p>22 unfortunately can't be more clear about how I knew</p> <p>23 he was at Weil.</p> <p>24 Q. Is it anything other than process of</p> <p>25 elimination that makes you think that he worked</p>	<p style="text-align: right;">Page 85</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>for Weil?</b></p> <p>3 A. I have a recollection that he worked</p> <p>4 for Weil. I can't be more specific as to why I</p> <p>5 have that recollection.</p> <p>6 Q. Is it possible he was a Lehman intern?</p> <p>7 A. It's possible.</p> <p>8 Q. Were there Lehman interns in and</p> <p>9 around the premises when this work was being done?</p> <p>10 MR. BERNSTEIN: Were you finished with</p> <p>11 your answer, your prior answer?</p> <p>12 Q. I am sorry. If I interrupted, I</p> <p>13 apologize. Is there any --</p> <p>14 A. Again, it is not because of</p> <p>15 recollection, but I would have been very surprised</p> <p>16 if we would have been using a Lehman intern for</p> <p>17 this. Again, given that I can't be more precise</p> <p>18 about who it was, things are possible, but it</p> <p>19 would surprise me if that was the case.</p> <p>20 Q. Were there any junior-level Lehman</p> <p>21 personnel in and around the premises when this</p> <p>22 work was being done?</p> <p>23 A. Again, I couldn't say with complete</p> <p>24 certainty, but I would be surprised if there were.</p> <p>25 Q. Did you know everybody who was in and</p>

<p style="text-align: right;">Page 86</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>around the premises when this work was being done?</b></p> <p>3 A. I obviously didn't know everybody who</p> <p>4 was involved.</p> <p>5 Q. And had you met this young man at any</p> <p>6 time prior to seeing him when this work was being</p> <p>7 done?</p> <p>8 A. I don't recall meeting him prior to</p> <p>9 that.</p> <p>10 Q. I am going to put before you what has</p> <p>11 been marked at a previous deposition as</p> <p>12 Exhibit 200. Mr. Lowitt, I will ask you what I</p> <p>13 asked you with respect to other documents. Would</p> <p>14 you take a look through that document sufficiently</p> <p>15 to tell me whether you have seen it before.</p> <p>16 A. I certainly saw it as part of my -- I</p> <p>17 have seen it before.</p> <p>18 Q. Let me ask you this. Have you seen it</p> <p>19 before, apart from your preparation for the</p> <p>20 deposition?</p> <p>21 A. I don't recall seeing it before that.</p> <p>22 It is just an interim work product, and when I</p> <p>23 recall seeing it is as part of my preparation for</p> <p>24 this deposition.</p> <p>25 Q. Is that your handwriting on the</p>	<p style="text-align: right;">Page 87</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>document?</b></p> <p>3 A. Part of this looks like my</p> <p>4 handwriting.</p> <p>5 Q. Does that include the part that says</p> <p>6 "mark down," down below the asset line?</p> <p>7 A. I can't be certain of that, but it may</p> <p>8 well be.</p> <p>9 Q. Why do you say it may well be?</p> <p>10 Because it looks like your handwriting to you?</p> <p>11 A. It looks like it could be my</p> <p>12 handwriting.</p> <p>13 Q. And there are other annotations on the</p> <p>14 document by hand. Do you recognize any of them as</p> <p>15 your handwriting, the various numbers written on</p> <p>16 the page?</p> <p>17 A. The numbers on the right side of the</p> <p>18 adjust column look like my handwriting. The ones</p> <p>19 to the left actually don't.</p> <p>20 Q. When you say the adjust column, you</p> <p>21 are talking about the adjustment column both for</p> <p>22 assets and liabilities? There are two adjustment</p> <p>23 columns.</p> <p>24 A. To the right of both of those columns.</p> <p>25 Q. Under the word "asset," where it says</p>
<p style="text-align: right;">Page 88</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>40.31 and 8.4, that may not be your handwriting;</b></p> <p>3 <b>is that right?</b></p> <p>4 A. That is correct.</p> <p>5 Q. Do you have any idea whose handwriting</p> <p>6 that is?</p> <p>7 A. I do not.</p> <p>8 Q. Do you recall making handwritten</p> <p>9 notations on the financial schedule as part of</p> <p>10 this iterative work?</p> <p>11 A. I do.</p> <p>12 Q. Why are you doing that?</p> <p>13 A. We are really trying to keep track of</p> <p>14 what are the assets that Barclays is willing to</p> <p>15 purchase and at what price they would be willing</p> <p>16 to purchase it at that reflects a difference</p> <p>17 between our book value and what they would be</p> <p>18 willing to purchase at to reflect the size of the</p> <p>19 purchase and the market conditions.</p> <p>20 Q. Take a look, if you would, sir, at the</p> <p>21 handwritten entries along the line for government</p> <p>22 and agencies on the asset side. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Is that a 42 or a 41 in your</p> <p>25 handwriting next to the adjustment column?</p>	<p style="text-align: right;">Page 89</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 A. It looks like 41 to me.</p> <p>3 Q. Do you recall a point where Barclays</p> <p>4 offered 41 for government and agencies? I'm</p> <p>5 wondering why that number is higher than the</p> <p>6 number shown on the schedule.</p> <p>7 A. I can't say. We may have found that</p> <p>8 the amount of governments and agencies was</p> <p>9 actually more than was on the schedule rather than</p> <p>10 a markup of any position.</p> <p>11 Q. I asked you earlier before about --</p> <p>12 that sort of vague question I put about the</p> <p>13 difference between the bottoms-up review and the</p> <p>14 top-down look. This sort of -- the question I am</p> <p>15 about to ask you relates to that.</p> <p>16 Are the calculations being done on</p> <p>17 this schedule and whatever other calculations were</p> <p>18 done like that that day, are they meant to achieve</p> <p>19 the raw total number or are they meant to develop</p> <p>20 the components, add them up and see what the raw</p> <p>21 number will be?</p> <p>22 A. I think it is supposed to cover both,</p> <p>23 which is supposed to say bottoms up, what does it</p> <p>24 look like, and then top down, what would we need</p> <p>25 to do to achieve the overall goal.</p>

<p style="text-align: right;">Page 90</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. And the overall goal is the price that</p> <p>3 Barclays will pay and the difference between that</p> <p>4 and the value shown on Lehman's books, yes?</p> <p>5 A. The difference between what Barclays</p> <p>6 are willing to pay versus the amount that's on</p> <p>7 Lehman's books which reflects, you know, the</p> <p>8 market price of those securities.</p> <p>9 Q. When that agreement ultimately was</p> <p>10 made, whatever that difference was between the</p> <p>11 amount shown on the books and the amount Barclays</p> <p>12 would pay, was it expressed as a percentage of the</p> <p>13 amount shown on the books?</p> <p>14 A. My recollection is that it was a</p> <p>15 dollar amount, not a percentage.</p> <p>16 MR. GAFFEY: I need to take about ten</p> <p>17 minutes. Can we do that now? Is that</p> <p>18 convenient?</p> <p>19 MR. BERNSTEIN: Sure.</p> <p>20 (Recess)</p> <p>21 BY MR. GAFFEY:</p> <p>22 Q. Exhibit 200, sir, is before you. We</p> <p>23 were talking before the break about some of your</p> <p>24 annotations down the right-hand side of each of</p> <p>25 the adjustment columns.</p>	<p style="text-align: right;">Page 91</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 I direct your attention now to the</p> <p>3 words "mark down" at the bottom. Do you have any</p> <p>4 information, sir, as to why you wrote the words</p> <p>5 "mark down" on this document? Why you would have</p> <p>6 written the words "mark down" on this document?</p> <p>7 A. I really don't have any recollection</p> <p>8 of why that would be the case. We were in this</p> <p>9 exercise both identifying which assets Barclays</p> <p>10 would be purchasing and the price they were</p> <p>11 comfortable paying, and that represented a -- you</p> <p>12 know, obviously a lower price than they were on</p> <p>13 the books for.</p> <p>14 So it is possible that it has to do</p> <p>15 with that, but I don't recall writing this down</p> <p>16 specifically. So that would just be an</p> <p>17 interpretation of what I am seeing on the page.</p> <p>18 Q. Without regard to that particular</p> <p>19 document, sir, in this process where the</p> <p>20 determination is being made as to the amount that</p> <p>21 this schedule finally will reflect when it is</p> <p>22 done, do you know if there is any back and forth</p> <p>23 between Lehman and Barclays as to the price?</p> <p>24 A. I mean I know there is back and forth</p> <p>25 between Lehman and Barclays vis-a-vis what assets</p>
<p style="text-align: right;">Page 92</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 are going to be included. So I recall, for</p> <p>3 example, that a set of the mortgage assets were</p> <p>4 ones that Barclays said they weren't in a position</p> <p>5 to determine value so they would -- they would not</p> <p>6 include those.</p> <p>7 And I know that there was ---if you</p> <p>8 are asking me do I know precisely the nature of</p> <p>9 that back and forth, I don't.</p> <p>10 Q. I'll follow up on the -- the inclusion</p> <p>11 of assets point that you just told me about. My</p> <p>12 question goes more toward the number, the number</p> <p>13 that's finally agreed.</p> <p>14 Is there a negotiation of that number,</p> <p>15 Barclays wants it to be a zillion dollars and</p> <p>16 Lehman wants it to be one, and they negotiate it?</p> <p>17 Do you know anything about the process that led to</p> <p>18 it being that number as opposed to any other</p> <p>19 number?</p> <p>20 A. Again, I wasn't in the room where the</p> <p>21 negotiations were taking place, but what -- you</p> <p>22 know, what I was seeing was, you know, information</p> <p>23 that was coming in from the various businesses</p> <p>24 that indicated how much less Barclays would pay</p> <p>25 for certain assets than it was on the books of</p>	<p style="text-align: right;">Page 93</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Lehman for, and that the combination of those</p> <p>3 things I think were being tracked and became part</p> <p>4 of the back and forth of the negotiation.</p> <p>5 But I again wasn't party to those</p> <p>6 discussions, so I don't know how that was</p> <p>7 proceeding. But my sense was it was an iterative</p> <p>8 process between the parties.</p> <p>9 Q. Do you have any -- not with respect to</p> <p>10 the particular document we have marked as</p> <p>11 Exhibit 200, but if you can use that to refresh</p> <p>12 your recollection, fine.</p> <p>13 Do you have any recollection of where</p> <p>14 you sit in the process? You're writing down</p> <p>15 numbers on a financial statement. What are you</p> <p>16 keeping track of here?</p> <p>17 A. I don't have a specific recollection,</p> <p>18 but I would imagine that what I was keeping track</p> <p>19 of was a combination of which assets Barclays</p> <p>20 would have or would not be purchasing because they</p> <p>21 were in a position to say what price they would be</p> <p>22 willing to purchase it for, so that was part of</p> <p>23 the screening exercise that we talked about</p> <p>24 earlier that Barclays was engaging with their</p> <p>25 counterparts at Lehman about.</p>



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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 And then the difference between what</p> <p>3 the assets were on Lehman's books for and as a</p> <p>4 result of the bulk purchase and the volatility of</p> <p>5 the marketplace, what Barclays would be willing to</p> <p>6 pay for it.</p> <p>7 <b>Q. Was it your understanding of the</b></p> <p>8 <b>transaction -- did you have an understanding that</b></p> <p>9 <b>after the transaction, Barclays planned to sell</b></p> <p>10 <b>these assets off in bulk?</b></p> <p>11 MR. HUME: Objection, lacks</p> <p>12 foundation.</p> <p>13 A. I had no idea what Barclays were</p> <p>14 planning to do.</p> <p>15 <b>Q. You knew you were going to go work at</b></p> <p>16 <b>Barclays. You knew they were taking what</b></p> <p>17 <b>businesses they were taking. Did you have an</b></p> <p>18 <b>understanding that what Barclays was planning to</b></p> <p>19 <b>do was operate the business as Lehman had?</b></p> <p>20 MR. BERNSTEIN: Objection, compound,</p> <p>21 mischaracterizes his testimony.</p> <p>22 You may answer.</p> <p>23 A. Well, it seems like there were a</p> <p>24 couple of things you were saying. I didn't know I</p> <p>25 was going to work at Barclays because I didn't</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 know that the deal was going to be completed. I</p> <p>3 would -- I had had no discussions with Barclays</p> <p>4 vis-a-vis how they were going to operate these</p> <p>5 various businesses. So I am not in a position to</p> <p>6 say whether they were anticipating selling off</p> <p>7 these assets or not.</p> <p>8 You know, what I would have known was</p> <p>9 that if Barclays were going to maintain these on</p> <p>10 their balance sheet, then they needed sort of</p> <p>11 equity to support those assets and they needed</p> <p>12 room within their leverage ratios, and I wouldn't</p> <p>13 have known if they had an ability to absorb that</p> <p>14 or not.</p> <p>15 <b>Q. Can you go back to Exhibit 19. That's</b></p> <p>16 <b>the one without the handwritten notes.</b></p> <p>17 <b>Now, Exhibit 19 shows on the liability</b></p> <p>18 <b>side entries for cure payment and comp on the</b></p> <p>19 <b>lower right-hand side. Do you see that?</b></p> <p>20 A. I do.</p> <p>21 <b>Q. And cure payment is put at</b></p> <p>22 <b>2.25 billion, and comp is put at 2 billion. Do</b></p> <p>23 <b>you see that?</b></p> <p>24 A. Yes. There isn't the dot on my copy,</p> <p>25 but yes, 2.25 and 2 billion.</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Do you know the basis upon which those</b></p> <p>3 <b>numbers were calculated?</b></p> <p>4 MR. BERNSTEIN: Objection, compound.</p> <p>5 A. When you say the basis under which</p> <p>6 they were calculated, I mean those were numbers</p> <p>7 that -- the \$2 billion of comp I think was a</p> <p>8 negotiated number between the parties.</p> <p>9 The cure payment number was one that I</p> <p>10 recall Martin Kelly was working on and that, you</p> <p>11 know, it represented the best estimate that we had</p> <p>12 of the -- those payables that would be assumed by</p> <p>13 Barclays.</p> <p>14 <b>Q. And was it, to your understanding, a</b></p> <p>15 <b>component of the transaction that the difference</b></p> <p>16 <b>between the amount Barclays would pay for the</b></p> <p>17 <b>assets and the amount for which -- and the</b></p> <p>18 <b>amount -- the value of those assets shown on</b></p> <p>19 <b>Lehman's books needed to exceed the amount of</b></p> <p>20 <b>liabilities assumed for cure and comp?</b></p> <p>21 MR. HUME: Objection, lacks</p> <p>22 foundation.</p> <p>23 A. I wasn't party to the discussions that</p> <p>24 were occurring between sort of Lehman and Barclays</p> <p>25 with regard to that. Again, you know, we spent a</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 lot of time on this, the difference between the</p> <p>3 amount that things were on Lehman's books for and</p> <p>4 the amount that Barclays were going to pay for,</p> <p>5 for those assets. How they viewed their ability</p> <p>6 to capture that difference, I just have no basis</p> <p>7 to assess.</p> <p>8 <b>Q. My question goes to something slightly</b></p> <p>9 <b>different, not Barclays' state of mind. It is</b></p> <p>10 <b>more toward did you hear any conversation, see any</b></p> <p>11 <b>documents, learn any facts at the time this</b></p> <p>12 <b>schedule was being prepared about that issue,</b></p> <p>13 <b>about whether the 5 billion was to cover the cost</b></p> <p>14 <b>of the assumed liabilities?</b></p> <p>15 A. I don't recall knowing anything</p> <p>16 specific to that, and again, that would have been</p> <p>17 something that would have been discussed between</p> <p>18 Lehman and Barclays.</p> <p>19 <b>Q. Did you ever have a discussion with</b></p> <p>20 <b>Mr. Kelly concerning whether the 5 billion was</b></p> <p>21 <b>needed to cover Barclays' expenses?</b></p> <p>22 A. I don't recall a conversation with</p> <p>23 Martin about that.</p> <p>24 (Exhibit 217, document Bates stamped</p> <p>25 BCI-EX00115595 through 654 marked for</p>

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 identification, as of this date.)</p> <p>3 Q. Mr. Lowitt, I have put before you what</p> <p>4 we have marked as Exhibit 217, a document,</p> <p>5 multipage document bearing Bates number</p> <p>6 BCI-EX00115595 through 115654.</p> <p>7 I will ask you if you have any</p> <p>8 recollection of seeing this document before.</p> <p>9 A. I don't recall this document.</p> <p>10 Q. I will represent to you, sir, that</p> <p>11 this exhibit is put together in the manner in</p> <p>12 which it was produced to us by Barclays. In other</p> <p>13 words, the metadata put all of these pages</p> <p>14 together.</p> <p>15 Can you see any reason why the</p> <p>16 schedule that is the first page of the document</p> <p>17 would have been combined with the triparty</p> <p>18 collateral analysis that's attached to it?</p> <p>19 MR. BERNSTEIN: Objection, no</p> <p>20 foundation.</p> <p>21 MR. HUME: When you say, when you say</p> <p>22 the metadata -- you said the metadata put</p> <p>23 the pages together. I don't know what you</p> <p>24 mean.</p> <p>25 MR. GAFFEY: It appears from Barclays'</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 production that this is produced as a</p> <p>3 singular document.</p> <p>4 MR. HUME: Was it attached to an</p> <p>5 e-mail? This whole production came from an</p> <p>6 e-mail?</p> <p>7 MR. GAFFEY: No.</p> <p>8 MR. HUME: It was not attached to an</p> <p>9 e-mail?</p> <p>10 MR. GAFFEY: Not the way it was</p> <p>11 produced. It could well be a clerical</p> <p>12 issue, but I need to ask him about it.</p> <p>13 MR. BERNSTEIN: Can I ask a question?</p> <p>14 Who put the Bates numbers on this?</p> <p>15 MR. GAFFEY: Barclays.</p> <p>16 A. But I think I know what at least</p> <p>17 elements of this are. These are materials that as</p> <p>18 I was preparing for the deposition, as I looked</p> <p>19 through --</p> <p>20 MR. HUME: Can anyone give me a copy?</p> <p>21 I don't have a copy.</p> <p>22 Q. Go ahead.</p> <p>23 A. I was asked the question whether I had</p> <p>24 any materials that were associated with the period</p> <p>25 post the bankruptcy, and the first and second</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 schedules I believe were materials that I made</p> <p>3 available through my lawyers to Barclays. The</p> <p>4 subsequent materials, I'm not aware of what those</p> <p>5 would be.</p> <p>6 Q. Let me see if I can get a slightly</p> <p>7 clearer record on it. The first page is what you</p> <p>8 are referring to as the first schedule?</p> <p>9 A. Yes.</p> <p>10 Q. The second page entitled "Triparty</p> <p>11 Collateral Analysis" is the second.</p> <p>12 A. Yes.</p> <p>13 Q. But after that, you haven't seen the</p> <p>14 document before?</p> <p>15 A. I don't have a specific recollection</p> <p>16 of that, but it is possible that this -- I mean I</p> <p>17 would just be speculating what the long document</p> <p>18 is.</p> <p>19 Q. I don't want you to do that.</p> <p>20 You have seen the first page marked</p> <p>21 115595, yes?</p> <p>22 A. Yes.</p> <p>23 Q. You have seen that before?</p> <p>24 A. This page.</p> <p>25 Q. Right.</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And you have seen the second page</p> <p>4 bearing the number in the lower right-hand corner</p> <p>5 115596?</p> <p>6 A. Correct.</p> <p>7 Q. And you don't know if you have seen</p> <p>8 the pages 115597 through the end of the document?</p> <p>9 A. Correct.</p> <p>10 Q. What's the second page, marked 115596?</p> <p>11 A. I believe that this is the collateral</p> <p>12 that was with the Fed that was part -- that was --</p> <p>13 as there was the necessity to unwind the Fed repo,</p> <p>14 this was the collateral that was returned to</p> <p>15 Lehman from the Fed.</p> <p>16 Q. Can you tell me what it means when it</p> <p>17 describes collateral value after margin reduction?</p> <p>18 A. This is a schedule from the Fed. It</p> <p>19 says, "Customer Lehman Brothers," top left.</p> <p>20 Q. Well, in the column where it says</p> <p>21 "effective margin," do you understand that to be</p> <p>22 describing the haircut in some fashion?</p> <p>23 MR. BERNSTEIN: No foundation.</p> <p>24 Objection, no foundation.</p> <p>25 A. It is not my schedule, so I don't</p>

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 know.  
3 Q. OK. All right, that's fine. Let's  
4 put the document aside.  
5 I want to go back to the conversation  
6 you told me about a while ago that you had with  
7 Mr. Richie on the morning of Friday, September 19,  
8 about looking for additional sources of value.  
9 A. Right.  
10 Q. Did Mr. Richie say to you in sum or  
11 substance that it was critical to the deal closing  
12 to find those additional sources of value?  
13 A. I don't recall Rich saying it was  
14 critical to the deal closing. But clearly it was  
15 important as an input into the discussions that  
16 were taking place between Barclays and Lehman.  
17 Q. The conversation that you had with  
18 Mr. McDade, the first conversation that you had  
19 about -- as between the one with Mr. Richie, that  
20 you had about finding additional sources of  
21 collateral, was that in the early morning of  
22 Friday?  
23 A. My recollection is somewhat hazy, but  
24 I believe it was early on Friday morning.  
25 Q. Was there a meeting with Mr. McDade

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Mr. Richie other than that it was -- other than we  
3 needed to look to identify sources of additional  
4 value.  
5 Q. Did you speak or otherwise communicate  
6 with Mr. McDade about the issue after you spoke to  
7 Richie?  
8 A. I can't recall any additional  
9 conversations with Bart, but the progress that we  
10 were making in identifying sources of value is  
11 something that I would have been communicating to  
12 Bart through the course of the day.  
13 Q. Now, there came a point during the  
14 course of the day where Bart went down to the  
15 bankruptcy court, correct?  
16 A. On the Friday, yes.  
17 Q. And approximately when during the day  
18 was that, morning or afternoon?  
19 A. I don't know exactly when Bart went  
20 down, but I would assume it was in the afternoon.  
21 Q. And the hearing went on until the wee  
22 hours of the morning on the 20th. It went past  
23 midnight, correct?  
24 A. Don't know with certainty, but if you  
25 say that was what happened, I'm sure that's right.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 early on Friday morning that you attended along  
3 with others?  
4 A. I have no recollection of that  
5 meeting, but I believe it is possible that it took  
6 place. I think Thursday night was also an  
7 all-nighter.  
8 Q. It sounds like most of the week was  
9 all-nighters.  
10 Was there a sense of urgency in  
11 finding the additional sources of value?  
12 MR. BERNSTEIN: Objection, asked and  
13 answered.  
14 A. It was obviously important for us to  
15 do that.  
16 Q. When you spoke to Mr. Richie after you  
17 spoke to Mr. McDade, did Mr. Richie relay to you  
18 any conversations he had had with McDade about  
19 this issue?  
20 A. No. I don't believe he did.  
21 Q. Did you refer to your earlier  
22 conversation with Mr. McDade about the issue when  
23 you spoke to Mr. Richie?  
24 A. I don't have a recollection of the  
25 details of, you know, my conversation with

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. Do you know if Mr. McDade was down  
3 there for the entire hearing?  
4 A. Again, I wasn't there so I don't know  
5 if Bart was there for the whole time.  
6 Q. Do you know if as part of this project  
7 to identify additional sources of collateral, do  
8 you know if during the work related to that  
9 project anyone sent assets over to Barclays on the  
10 Friday?  
11 MR. BERNSTEIN: Objection, vague and  
12 ambiguous.  
13 A. I don't have a recollection.  
14 Q. Did it ever come to your attention  
15 that that happened, that additional sources of  
16 value that were found during the Friday project  
17 were sent over to Barclays on the Friday?  
18 MR. BERNSTEIN: Same objection.  
19 A. I don't have a recollection.  
20 Q. Was part of your -- was one of the  
21 goals of that work on the Friday to send assets to  
22 Barclays on the Friday, Friday, the 19th?  
23 MR. BERNSTEIN: Same objections.  
24 A. I don't have a recollection of that.  
25 Q. Putting before you what was marked at

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 a prior deposition as Exhibit 20. Can you take a  
3 look through the document and tell me whether you  
4 have seen it before?  
5 MR. BERNSTEIN: Just so the record is  
6 clear, when you are showing him documents  
7 like this, you mean the part after "unknown"  
8 and the 2009 date?  
9 MR. GAFFEY: Yes.  
10 Q. Do you understand what he is referring  
11 to? Up at the top it says "unknown" and then a  
12 date. Ignore that. That's imprinted on the  
13 document by our vendor. Below that is a copy of  
14 the document I want to ask you about.  
15 A. Again, only in the preparation for the  
16 deposition.  
17 Q. You note that the document is an  
18 e-mail addressed to you and Paolo Tonucci from  
19 Martin Kelly. That's the only e-mail on the  
20 chain.  
21 A. I can see that, yes.  
22 Q. Do you have a recollection of seeing  
23 this e-mail from Mr. Kelly at or about the time it  
24 is dated, September 16, 5:10 a.m.?  
25 A. I don't have a recollection of it

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. Yes.  
3 Q. And in it, it says, "You are a hero.  
4 Well done." Do you see that?  
5 A. Yes.  
6 Q. Do you have any recollection as to why  
7 you would respond to Mr. Kelly and describe him as  
8 a hero?  
9 A. I think the reason I would imagine  
10 that I was doing that, he had worked all night  
11 after an extremely tumultuous week around this  
12 deal, and that he had -- and it was part of just  
13 showing appreciation for that.  
14 Q. Do you have -- he was one of your  
15 direct reports, is that right, Martin Kelly?  
16 A. That is correct.  
17 Q. Do you have an understanding of -- can  
18 you describe to me what it was that Martin Kelly  
19 was doing overnight from Monday to Tuesday? What  
20 were his tasks?  
21 MR. BERNSTEIN: Objection, no  
22 foundation and compound.  
23 A. I know some of the things that Martin  
24 was doing. Martin was helping to sort of estimate  
25 some of the numbers that were going into the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 specifically.  
3 Q. Do you have any recollection of  
4 communicating in any way with Mr. Kelly in the  
5 early morning hours of September 16 about the deal  
6 terms?  
7 A. I don't have a recollection of  
8 speaking with Mr. Kelly about anything  
9 specifically, but speculatively, I would imagine  
10 that I would have spoken with him about what was  
11 our understanding of what was emerging.  
12 Q. And looking at the document in  
13 preparation for your testimony today, did that  
14 have any -- did that refresh your recollection in  
15 any way about communications with Mr. Kelly on the  
16 early -- in the early morning of September 16?  
17 A. It did not.  
18 Q. Does looking at that now refresh your  
19 recollection?  
20 A. No, it doesn't refresh the  
21 recollection.  
22 Q. Take a look, if you would, at the next  
23 e-mail up in the chain, which appears to be from  
24 you to Martin Kelly, copying Mr. Tonucci. Do you  
25 see that?

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 transaction, like the cure payment, and as the  
3 financial controller, he was a key participant in  
4 determining what some of the items in the  
5 transaction were, and as is clear from the e-mail,  
6 he had a good sense of what many of the key  
7 elements of the transaction included.  
8 Q. Is that the extent of your  
9 recollection about that?  
10 A. That's my recollection of that morning  
11 and my interactions with Martin and his role.  
12 Q. You referred before to some  
13 mortgage -- some mortgage securities that Barclays  
14 did not want.  
15 A. Correct.  
16 Q. Can you describe them in any more  
17 detail?  
18 A. Only that they were sort of  
19 residential mortgages. But no, I can't be more  
20 specific. But as you see in the e-mail, you know,  
21 it talks about \$3.6 billion of Resi assets left  
22 behind. I believe that's the -- those are the  
23 same assets I was referring to before.  
24 Q. Did you have an understanding in the  
25 early part of the week, the Monday, Tuesday, that

<p style="text-align: right;">Page 110</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2   <b>the agreement that was reached had 50 percent of</b> 3   <b>the Resis going to Barclays and 50 percent going</b> 4   <b>to Lehman, remaining with Lehman?</b> 5       A. I don't recall what the percentages 6       were, but there were clearly assets that were 7       staying and assets that were going. 8       <b>Q. I put before you, Mr. Lowitt, what has</b> 9       <b>been marked at a prior deposition as Exhibit 10.</b> 10      <b>I would ask you to take a look through the</b> 11      <b>document and tell me whether you have a</b> 12      <b>recollection of seeing it before.</b> 13      A. No, I don't recall seeing this before. 14      <b>Q. Some of the e-mails reflect on this --</b> 15      <b>well, the e-mail at the top appears to be an</b> 16      <b>e-mail from you to Jerry Reilly and Eric Felder.</b> 17      <b>Do you see that?</b> 18      A. Yes, I do. 19      <b>Q. And in that piece of the e-mail chain,</b> 20      <b>it says "that's my understanding, but check with</b> 21      <b>whoever drafted the purchase agreement, Ian," and</b> 22      <b>that's responding to a question about whether</b> 23      <b>certain Resis and auction securities are going to</b> 24      <b>be included, right?</b> 25      A. That seems to be the sense of the</p>	<p style="text-align: right;">Page 111</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2   chain of e-mails. 3       <b>Q. I want you to get the sense of it</b> 4       <b>because my question goes to your apparent</b> 5       <b>direction to Reilly and Felder to check with</b> 6       <b>whoever drafted the purchase agreement. Do you</b> 7       <b>know who drafted the purchase agreement?</b> 8       A. It would be -- I don't know. I would 9       assume it was lawyers from Weil working together 10      with maybe some lawyers from Lehman. 11      <b>Q. You are assuming it because that's</b> 12      <b>what -- do you have any factual basis for the</b> 13      <b>assumption or it is an assumption?</b> 14      A. It's an assumption. 15      <b>Q. And do you have any knowledge, sir, of</b> 16      <b>what facts were given to whoever drafted the</b> 17      <b>purchase agreement about the business terms that</b> 18      <b>had been agreed?</b> 19      <b>Let me make that question simpler. Do</b> 20      <b>you know what the drafters were told about the</b> 21      <b>terms of the deal?</b> 22      A. I do not. 23      <b>Q. And this e-mail appears to indicate</b> 24      <b>that at least on September 17 at 12:34 p.m., which</b> 25      <b>is the time of the e-mail from you to Reilly and</b></p>
<p style="text-align: right;">Page 112</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2   <b>Felder, you had not seen the purchase agreement;</b> 3   <b>is that correct?</b> 4       MR. BERNSTEIN: You are asking him if 5       that's what the e-mail indicates or -- 6       MR. GAFFEY: Actually let me ask if it 7       refreshes his recollection as to the first 8       time he saw the asset purchase agreement. 9       A. I don't believe I had seen the 10      purchase agreement. 11      <b>Q. Further down in that e-mail chain,</b> 12      <b>there is an e-mail from Eric Felder to a number of</b> 13      <b>people and a cc to a number of people including</b> 14      <b>you. And Mr. Felder wrote, "I think the Barclays</b> 15      <b>folks picked the assets. I recall them saying</b> 16      <b>they didn't want the auction securities, but I</b> 17      <b>wasn't in all the meetings."</b> 18      <b>Do you see that?</b> 19      A. I do. 20      <b>Q. Was it your understanding that the</b> 21      <b>Barclays folks picked the assets?</b> 22      A. The Barclays folks determined which 23      assets they were willing to purchase and which 24      assets they didn't want to purchase. So in that 25      sense, the Barclays folks picked the assets.</p>	<p style="text-align: right;">Page 113</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b> 2       <b>Q. Was it your understanding that</b> 3       <b>Barclays picked the assets it was willing to</b> 4       <b>purchase based on the quality of those assets they</b> 5       <b>were --</b> 6       MR. HUME: Objection, lacks 7       foundation. 8       A. I couldn't say why they chose to 9       purchase certain assets and not others. 10      <b>Q. Let me go back to what may have been</b> 11      <b>expressed to you at the time by others. That's</b> 12      <b>really what I am asking. Did anybody express to</b> 13      <b>you that Barclays was picking assets based on the</b> 14      <b>quality of the assets?</b> 15      A. I have no recollection that that was 16      the basis. It would have been what they -- how 17      they decided which assets they wanted to purchase 18      would have been driven by their own positions and 19      not wanting to get overconcentrated, as well as, 20      you know, their view of how easy it was to assess 21      what was an appropriate mark on those. 22      <b>Q. Take a look, if you would, sir, at the</b> 23      <b>second page of the exhibit. The earliest e-mail</b> 24      <b>in this e-mail chain is from -- I'll probably</b> 25      <b>murder this -- Gilles Aublin to Jerry Reilly, cc</b></p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Clement Bernard, dated September 17, 11:53 a.m.**  
3 **And it is asking in the last line**  
4 **whether there are "guidelines to exclude some**  
5 **assets that are deemed to be more toxic (for**  
6 **example, we have 2.8 billion of ARS, in high grade**  
7 **and muni combined)."**

8 **Do you see that?**

9 A. I do.

10 **Q. Does that refresh your recollection as**  
11 **to whether there were standards or guidelines**  
12 **governing assets Barclays had said it would**  
13 **purchase as opposed to those it said it would not?**

14 A. I wasn't aware of any guidelines. I  
15 know there were meetings that took place between  
16 managers at Barclays and managers at Lehman so  
17 that Barclays could make an assessment about  
18 whether they were willing to purchase certain  
19 assets, with an understanding that there were some  
20 assets in the portfolio that for reasons that made  
21 sense to them they chose not to want to purchase.

22 **Q. Mr. Lowitt, we talked earlier today in**  
23 **somewhat broad terms about the repo, and I would**  
24 **like to return to that topic and that segment of**  
25 **the week, as it were.**

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1 **LOWITT - HIGHLY CONFIDENTIAL**

2 As a consequence, on the Thursday,  
3 there was a huge effort under way to move the  
4 collateral back from -- move -- to move the  
5 collateral from JP Morgan, who was the triparty  
6 agent for Lehman, to BONY, that was the triparty  
7 agent for Barclays, with Chase obviously concerned  
8 through this whole process about their own  
9 exposures to Lehman Brothers.

10 The effect of this was that through  
11 the Thursday, this repo was now effected with  
12 Barclays rather than with the Fed, so Barclays  
13 needed to come up with, in round numbers, the  
14 \$45 billion of cash to buy the Fed out of their  
15 repo position so the Fed no longer had a claim on  
16 that collateral and received the cash for that  
17 collateral.

18 That then became a new and very  
19 different element, because there was no way that  
20 LBI could get out of that repo position. It  
21 couldn't generate \$45 billion to give to Barclays  
22 to get back its collateral. The repo was now an  
23 imposed element on whatever deal was going to get  
24 consummated between LBI and Barclays.

25 **Q. Now, when the repo was put into**

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1 **LOWITT - HIGHLY CONFIDENTIAL**

2 A. Sure.

3 **Q. Give me as best you can a description**  
4 **of how it came to be that the repo with Barclays**  
5 **was necessary and agreed. What caused the repo to**  
6 **come into being?**

7 A. I think the context for it was the  
8 extreme markets disruption that was being  
9 experienced that week, where, as you recall, AIG  
10 was -- received assistance on the Tuesday. There  
11 was big increases in credit default swaps of many  
12 other firms.

13 The Fed, for reasons of its own,  
14 decided that it didn't want to have ongoing  
15 exposure to LBI, and although I wasn't party to  
16 any of the discussions, you know, communicated to  
17 Barclays that they wanted Barclays to take them  
18 out of their repo with Lehman Brothers.

19 I was asked to attend the meeting with  
20 the Fed, together with people at Barclays, to talk  
21 through how that was going to get effected, but it  
22 was clear that the Fed was very keen on being  
23 taken out of that risk so that they would  
24 either -- for reasons that made sense to them. I  
25 can speculate on what those were.

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1 **LOWITT - HIGHLY CONFIDENTIAL**

2 **place -- was it put into place on the Thursday,**  
3 **the 18th?**

4 A. That's my recollection, that we met  
5 with the Fed on the Wednesday and Thursday, and  
6 the Thursday evening was when the repo was unwound  
7 with the Fed and a new repo was put in place with  
8 Barclays.

9 **Q. Is it your understanding, sir, as the**  
10 **deal ultimately came to be implemented, one**  
11 **element of it was that Lehman -- that the repo was**  
12 **extinguished, it was terminated?**

13 MR. HUME: Objection, vague and  
14 ambiguous, calls for a legal conclusion.

15 **Q. Can you answer my question.**

16 A. Can you repeat the question.

17 (Record read)

18 A. I mean what was clear to me was that  
19 Barclays kept the collateral and LBI kept the  
20 cash. If that's the equivalent of extinguishing  
21 the repo, yes, it extinguished the repo.

22 What really was happening, Barclays  
23 accepted the collateral that was in the repo trade  
24 and they kept that collateral and LBI kept the  
25 cash.

<p style="text-align: right;">Page 118</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. The collateral included the haircut</b></p> <p>3 <b>over and above the cash amount?</b></p> <p>4 A. It included the collateral -- the</p> <p>5 amount of cash was less than the collateral</p> <p>6 reflecting the standard financing haircuts on</p> <p>7 those collateral terms, but yes.</p> <p>8 <b>Q. Yes, it kept the difference?</b></p> <p>9 A. It got the collateral that was part of</p> <p>10 the repo. They retained that. And they didn't</p> <p>11 get the cash back from LBI. That cash obviously</p> <p>12 had gone to the Fed to take the Fed out of its</p> <p>13 repo position.</p> <p>14 <b>Q. Do you know when during the week it</b></p> <p>15 <b>was determined that that's how the repo would be</b></p> <p>16 <b>resolved, that Barclays would keep the collateral</b></p> <p>17 <b>and Lehman would keep the cash?</b></p> <p>18 A. It was definitely part of -- I wasn't</p> <p>19 party to the negotiating sessions, but it was</p> <p>20 definitely part of the discussions that were</p> <p>21 occurring on the Friday.</p> <p>22 <b>Q. The discussions between whom and whom</b></p> <p>23 <b>on the Friday?</b></p> <p>24 A. Well, we were looking to see how the</p> <p>25 deal -- within finance, there was an effort to</p>	<p style="text-align: right;">Page 119</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 determine what would be delivered to Barclays</p> <p>3 under the deal, whatever the deal was, and the</p> <p>4 repo as a new fact in the situation allowed or it</p> <p>5 enabled or became a basis for the new transaction.</p> <p>6 <b>Q. I think we might be at cross purposes</b></p> <p>7 <b>here. My question to you, sir, when you referred</b></p> <p>8 <b>to some discussions that were occurring on the</b></p> <p>9 <b>Friday, I asked you between whom and whom. What</b></p> <p>10 <b>people were involved in these discussions?</b></p> <p>11 A. I don't have specific recollections of</p> <p>12 the discussions. I do know that the people in</p> <p>13 finance, so that would have included Jerry Reilly,</p> <p>14 myself, would have been discussing what collateral</p> <p>15 was going to be delivered to Barclays and how that</p> <p>16 was going to be effected.</p> <p>17 Actually, could I take a break,</p> <p>18 please?</p> <p>19 <b>Q. Sure.</b></p> <p>20 <b>(Luncheon recess)</b></p> <p>21 <b>(Continued on next page)</b></p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 120</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 AFTERNOON SESSION</p> <p>3 1:10 p.m.</p> <p>4 BY MR. GAFFEY:</p> <p>5 <b>Q. Mr. Lowitt, I have put before you what</b></p> <p>6 <b>we have previously marked as Deposition Exhibit 5.</b></p> <p>7 <b>Take a look at the document and tell me whether</b></p> <p>8 <b>you recognize it.</b></p> <p>9 A. I don't recognize the e-mail, but I am</p> <p>10 obviously aware of the people who are referenced</p> <p>11 in it.</p> <p>12 <b>Q. There is a reference in the e-mail,</b></p> <p>13 <b>which is from you to Chris O'Meara, to -- you say</b></p> <p>14 <b>as follows: "We worked all night to find what</b></p> <p>15 <b>inventory we have available to sell. Meet me in</b></p> <p>16 <b>Martin's office. Jerry has the details. Ian."</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A. I do.</p> <p>19 <b>Q. Do you recall working all night from</b></p> <p>20 <b>Thursday to Friday to find inventory to sell?</b></p> <p>21 A. I do.</p> <p>22 <b>Q. Is that part of this project we were</b></p> <p>23 <b>talking about before the lunch break of looking</b></p> <p>24 <b>for additional value for Barclays?</b></p> <p>25 A. No. This was in the construct of the</p>	<p style="text-align: right;">Page 121</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 earlier transaction which was around our ability</p> <p>3 to insure that the collateral that we were selling</p> <p>4 to Barclays was collateral that was unencumbered</p> <p>5 and available.</p> <p>6 <b>Q. When you're referring to the</b></p> <p>7 <b>collateral that was going to Barclays, is that the</b></p> <p>8 <b>collateral in the repo?</b></p> <p>9 A. It was the collateral that was</p> <p>10 conceptually referenced on the earlier schedules,</p> <p>11 the assets that would have been described in that</p> <p>12 schedule. So we were -- it wasn't thinking about</p> <p>13 the repo specifically. It was, you know, what</p> <p>14 assets did we have where we knew we had possession</p> <p>15 of those so that we could make sure that they went</p> <p>16 to Barclays, some portion of which was the repo,</p> <p>17 but it could have been in other inventory as well.</p> <p>18 <b>Q. And is that because during the week,</b></p> <p>19 <b>starting on Tuesday and now we are at Friday, the</b></p> <p>20 <b>body of available collateral had shrunk because of</b></p> <p>21 <b>issues of possession or title?</b></p> <p>22 A. Yes. And the fact that, you know,</p> <p>23 some of it was being financed and that the various</p> <p>24 counterparties wouldn't have returned it, and</p> <p>25 there was that series of issues, operationalizing</p>

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 the delivery of collateral.  
3 **Q. And do you have a sense of how much**  
4 **that body of collateral had shrunk from Tuesday to**  
5 **Friday?**  
6 A. I don't have a recollection of how  
7 much.  
8 **Q. Do you remember if on Friday, whether**  
9 **you remember the number today or not, do you**  
10 **remember if on Friday you had a determination of**  
11 **what the value was of what was available to give**  
12 **to Barclays?**  
13 A. I know we worked Thursday to develop a  
14 point of view of what collateral we did have that  
15 we could deliver as part of the transaction. I  
16 can't be more specific about the amount, and I  
17 would simply be speculating as to how much it was  
18 less than the amount that was available on Monday.  
19 **Q. But again without regard to the**  
20 **particular number, and it is a while ago, you do**  
21 **remember that there was a number of some kind, if**  
22 **you can't remember it today? It was quantified in**  
23 **some way?**  
24 A. There were a series of schedules that  
25 identified specific pieces of collateral that

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 says Bart asked some Lehman folks to meet with  
3 Alex.  
4 **Q. I beg your pardon, that's absolutely**  
5 **right, that's absolutely right.**  
6 **Do you know why Bart wanted LEH folks**  
7 **to meet with Alex Kirk about the Barclays deal**  
8 **that morning?**  
9 A. I don't know. Again, the sense of the  
10 e-mail is that it is associated with the inventory  
11 that was being sold as part of the transaction,  
12 and the work that we had done the previous evening  
13 was around determining what it was that we had  
14 that was available to sell.  
15 So it is -- they seem linked to me.  
16 **Q. Is that determination with respect to**  
17 **inventory separate from the other issue we were**  
18 **talking about before, the 15c3 and unencumbered**  
19 **collateral?**  
20 A. It is separate in the sense that --  
21 they are different issues to my mind. So there  
22 was one which was what was the inventory that we  
23 had that was available to us that we could include  
24 in a transaction. So that was one thing.  
25 And then separately there is a

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 based on the information that we had, which was  
3 hazy because of data issues with Chase and others,  
4 that we were confident was collateral we could  
5 have delivered into the deal.  
6 **Q. And there is a reference in the lower**  
7 **e-mail, that is the earlier e-mail from Chris**  
8 **O'Meara to you at 6:24 in the morning on**  
9 **September 19, "Ian, Bart asked some LEH folks to**  
10 **meet with Alex Kirk about the Barclays deal at**  
11 **7 a.m. today. We will get him up to speed on**  
12 **where we stand, especially on the matter of**  
13 **inventory being sold. We will then coordinate**  
14 **with the LEH business heads to ensure they are in**  
15 **agreement, FYIC."**  
16 **Focusing your attention on that**  
17 **language, sir, was there a meeting with Alex Kirk**  
18 **in the early morning of September 19?**  
19 A. I don't recall.  
20 **Q. Do you know if there was a meeting --**  
21 **well, this suggests that you had a conversation or**  
22 **a communication of some kind with Bart McDade**  
23 **prior to 6:24 on September 19. Does it refresh**  
24 **your recollection as to --**  
25 A. No, I actually don't see that in -- it

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 question of sort of unencumbered collateral, which  
3 would have overlapped with this but was different  
4 from it, and I think the exercise that we  
5 undertook on the Thursday evening was to determine  
6 what was the inventory that was unencumbered that  
7 we would be able to sell to Barclays.  
8 **Q. I think -- I always get these two**  
9 **numbers backwards. We talked before about a**  
10 **\$1.9 billion number, an approximately \$2 billion**  
11 **number as between the 15c3 and the unencumbered**  
12 **collateral?**  
13 A. No, I think we said unencumbered  
14 collateral was around \$2 billion and the 15c3 was  
15 between 700 and 800 million.  
16 **Q. Those are the two I mixed up. Was**  
17 **the -- did the unencumbered collateral overlap the**  
18 **inventory that is being discussed in Exhibit 5?**  
19 MR. HUME: Objection, lacks  
20 foundation.  
21 A. Really they were just different  
22 things. To the extent that we discovered  
23 inventory that was unencumbered and could be  
24 delivered into the deal and wasn't part of the  
25 repo, then it would be available as unencumbered



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1 LOWITT - HIGHLY CONFIDENTIAL  
2 collateral to deliver into the transaction.  
3 **Q. And was property of that character**  
4 **added to the body of assets that were going to be**  
5 **traded to Barclays? Not in the repo but available**  
6 **for transfer?**  
7 A. Again, this exercise was associated  
8 with trying to satisfy the structure that was  
9 existing prior to the repo, even though it was  
10 done on the Thursday evening. I think what  
11 emerged through Friday was that the repo itself  
12 was going to be the basis of the transaction.  
13 **Q. That brings me back to the search for**  
14 **additional value, if the repo itself was going to**  
15 **be the basis for the transaction. The 15c3 and**  
16 **the unencumbered collateral were not within the**  
17 **repo, correct?**  
18 MR. BERNSTEIN: Objection, form,  
19 compound.  
20 Go ahead.  
21 A. The transaction clearly included more  
22 than just the repo. It included other elements as  
23 well. It included the repo, it included 15c3 and  
24 unencumbered collateral. It included the  
25 exchanged traded derivatives. It included a

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 of the e-mails, from Ian Lowitt to Gerard Reilly,  
3 September 17, 9:29 p.m. In it you write, the  
4 subject is, "Are we set up to do the marking of  
5 the positions? Ian."  
6 A. Yup.  
7 **Q. And then above that is an e-mail from**  
8 **you to Gerard Reilly forwarding that e-mail and**  
9 **adding, "What I meant was for BarCap to mark the**  
10 **positions further? Ian." Do you see that?**  
11 A. I do.  
12 **Q. What did you mean when you wrote that**  
13 **to Mr. Reilly, asking if we were set up to do the**  
14 **marking of positions and with the explanatory note**  
15 **about BarCap?**  
16 A. Either -- what I understand as I read  
17 it now is that we were determining what was the  
18 price that BarCap were willing to pay for the  
19 assets of the -- that reflected the discount for  
20 the -- to use your word discount -- the delta  
21 between what they were on our books for and what  
22 they would buy it for, given the size of the  
23 purchase, as well as for the volatility of the  
24 underlying positions.  
25 **Q. So can you tell me why negotiations**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 variety of other things.  
3 So the repo was an element of the  
4 transaction, obviously a big part of the  
5 transaction, but it wasn't the sole part of the  
6 transaction.  
7 **Q. Was there a time, Mr. Lowitt, during**  
8 **the week when Barclays' personnel were involved in**  
9 **marking Lehman positions?**  
10 A. Marking Lehman positions for the  
11 purpose of --  
12 **Q. You would have to tell me.**  
13 A. I mean I think there were Barclays  
14 personnel involved in looking at our assets and  
15 determining what they would be willing to purchase  
16 it for, but they were not marking our positions  
17 for the purposes of our books and records.  
18 **Q. I show you what was marked at a prior**  
19 **deposition as Exhibit 23. I ask you to take a**  
20 **look at that.**  
21 **Do you recall seeing this e-mail chain**  
22 **before?**  
23 A. Not before preparing for the  
24 deposition.  
25 **Q. Take a look, please, at the earliest**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 were continuing on September 17 about that topic?  
3 A. I don't know whether they were  
4 negotiations. We were trying to determine what  
5 was the way in which we would effect the  
6 transaction, which was to deliver a series of  
7 assets to Barclays at prices that they were  
8 comfortable purchasing them at.  
9 **Q. Had the prices not been determined in**  
10 **the exercise on Tuesday with the development of**  
11 **the financial schedule we looked at before?**  
12 A. They weren't developed at the level  
13 of -- I don't know the extent to which they were  
14 developed, but we weren't aware of information  
15 that was at an asset-by-asset level which would  
16 have been necessary to effect the transaction.  
17 **Q. And was that process being conducted**  
18 **on an asset-by-asset level on the 17th? Is that**  
19 **what you are referring to here?**  
20 A. On the 17th we were believing what we  
21 needed to do was to mark the positions to a level  
22 that was consistent with what Barclays were  
23 willing to purchase them at.  
24 **Q. Did that happen?**  
25 A. I don't believe that it did.

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. Why not?</p> <p>3 A. I think the transaction changed when</p> <p>4 the repo was effected, and because the repo was</p> <p>5 effected, the transaction itself changed.</p> <p>6 Q. Was the process of marking the</p> <p>7 positions to a level that was consistent with what</p> <p>8 Barclays were willing to purchase them at referred</p> <p>9 to as the conversion?</p> <p>10 A. I don't believe so. The conversion --</p> <p>11 can you be more precise about the conversion.</p> <p>12 Q. I will show you a document in a little</p> <p>13 while about that.</p> <p>14 A. I would imagine the conversion is</p> <p>15 about converting the assets from the Fed to</p> <p>16 Barclays, would be my surmise about what that</p> <p>17 means.</p> <p>18 This was not an exercise that we</p> <p>19 actually undertook.</p> <p>20 Q. And --</p> <p>21 MR. BERNSTEIN: Can we be clear for</p> <p>22 the record, when you said this was not an</p> <p>23 exercise, I don't want to suggest an answer</p> <p>24 to you, but you might want to explain</p> <p>25 "this," because I'm not sure if you are</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 talking about the conversion or piece of</p> <p>3 paper that you are holding in your hand.</p> <p>4 Q. My question exactly.</p> <p>5 A. I am referring to what is described in</p> <p>6 this e-mail as having Barclays' traders come to</p> <p>7 Lehman and engage in a marking process.</p> <p>8 MR. BERNSTEIN: Just for the record,</p> <p>9 this e-mail is Exhibit 23, correct?</p> <p>10 THE WITNESS: That is correct.</p> <p>11 Q. Further up in that e-mail chain, there</p> <p>12 is an e-mail from Mr. Reilly to you, also</p> <p>13 September 17, at 9:35 p.m., responding to yours,</p> <p>14 saying "Ilan, I told business guys they must get</p> <p>15 counterparts at BarCap comfortable tomorrow night</p> <p>16 by our front-end systems. We will not have time</p> <p>17 to do Friday. We are going to send last night's</p> <p>18 assets and marks over so they can see mix and</p> <p>19 marks."</p> <p>20 What did you understand Mr. Reilly to</p> <p>21 be conveying to you with that e-mail?</p> <p>22 A. That we needed to have the Barclays'</p> <p>23 traders comfortable with the assets that they were</p> <p>24 purchasing and marks that they were going to buy</p> <p>25 them at that reflected a price that they were</p>
Page 132	Page 133
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 willing to pay for those assets.</p> <p>3 Q. Now, further up, the next one up,</p> <p>4 September 17, 9:41 p.m., Mr. Reilly writes to you,</p> <p>5 "I went through all docs and did not see reference</p> <p>6 to the price haircut. If we want conservative</p> <p>7 marks to reflect block nature, we need to know how</p> <p>8 much and then can allocate to most logical</p> <p>9 assets."</p> <p>10 Could you explain that to me?</p> <p>11 A. I think what Jerry is describing here</p> <p>12 is the need to reflect in the assets that we</p> <p>13 are -- we would be sending to Barclays a mark that</p> <p>14 reflected what they were willing to pay for the</p> <p>15 assets and that there needed to be a process of</p> <p>16 reflecting that not at the level of the gross</p> <p>17 asset category but at the level of individual</p> <p>18 assets.</p> <p>19 Q. Now, do I understand that to mean that</p> <p>20 the price haircut would be determined and then the</p> <p>21 assets would be identified to which it would be</p> <p>22 applied?</p> <p>23 MR. BERNSTEIN: Objection to the form.</p> <p>24 A. Yeah, I didn't see it in that way. I</p> <p>25 think it was trying to insure what we were doing</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 at an asset-by-asset level was consistent with</p> <p>3 what was in the agreement.</p> <p>4 Q. And is that -- when you say in the</p> <p>5 agreement, is that what you understood Mr. Reilly</p> <p>6 to be referring to when he referred to the docs?</p> <p>7 A. Yeah, the documents describing what</p> <p>8 the contract was.</p> <p>9 Q. You respond to Mr. Reilly by saying,</p> <p>10 "Since not in contract, hard to see what to" -- it</p> <p>11 says D-P but I will read that as "do. Ilan." Do</p> <p>12 you see that?</p> <p>13 A. I do.</p> <p>14 Q. Had you, by September 18, referred</p> <p>15 the -- now reviewed the contract?</p> <p>16 A. I had not.</p> <p>17 Q. Well, how would you know, Mr. Lowitt,</p> <p>18 what was and what was not in the contract?</p> <p>19 A. I didn't know what was in and what</p> <p>20 wasn't in the contract. I had a sense of what the</p> <p>21 terms were, but I hadn't reviewed it in the</p> <p>22 contract.</p> <p>23 Q. I note that you don't say in your</p> <p>24 e-mail to Mr. Reilly I don't know what the</p> <p>25 contract says. You say it's not in the contract.</p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Do you see that?**  
3 A. I do.  
4 **Q. Does that suggest to you that you had**  
5 **read the contract and seen no reference to the**  
6 **price haircut?**  
7 MR. BERNSTEIN: Objection. Asked and  
8 answered.  
9 A. I don't read it as such. I said if --  
10 it doesn't -- when I say "since not in contract,"  
11 it doesn't mean that I knew that independently.  
12 It is referencing what Jerry has said about that  
13 the documents didn't include it.  
14 **Q. So when you were saying to Mr. Reilly**  
15 **that it was hard to see what to do, what were you**  
16 **communicating?**  
17 A. It was hard to see how we were going  
18 to identify those assets that Barclays were going  
19 to purchase and what the pricing on each of those  
20 individual assets were going to be.  
21 **Q. And it was hard to see because, at**  
22 **least if Mr. Reilly's right that there is no**  
23 **reference to the price haircut, it doesn't give**  
24 **any guidance?**  
25 MR. BERNSTEIN: Objection to form.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 was now in place, that the repo represented -- was  
3 part of what any new transaction was going to be  
4 and that what you had in the repo addressed many  
5 of the operational questions that we were not sure  
6 how to address, which was which of the assets  
7 Barclays was going to acquire, because clearly the  
8 ones in the repo became the basis of what they  
9 were going to acquire, as well as what was the  
10 financing haircut associated with that.  
11 **Q. Mr. Lowitt, I am putting before you**  
12 **what has previously been marked as Deposition**  
13 **Exhibit 127. Have you seen that document before?**  
14 A. Again, I don't recall seeing this  
15 before the preparation for the deposition.  
16 **Q. Take a scan through it sufficient to**  
17 **familiarize yourself with it and let me know when**  
18 **you have done that.**  
19 A. OK.  
20 **Q. I would -- directing your attention to**  
21 **the earliest message on the page, the one at the**  
22 **bottom, from Gerard Reilly to you, Michael**  
23 **Gelband, copy Paolo Tonucci and Martin Kelly,**  
24 **September 18th, 2008 at 6:04 a.m.**  
25 **And in that e-mail entitled "Open**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Q. Is that right?**  
3 A. It is hard because, as Jerry says,  
4 "went through the docs and do not see reference to  
5 price haircut."  
6 **Q. So absent a reference in the**  
7 **documents, you don't know how to apply the price**  
8 **haircut? Is that what you are saying?**  
9 A. It is hard to determine how we are  
10 going to identify the series of assets that are  
11 part of the transaction and at what price those  
12 are going to be marked at and that Barclays is  
13 going to purchase them at.  
14 **Q. Now, did there come a time,**  
15 **Mr. Lowitt, where you understood that --**  
16 **withdrawn.**  
17 **Did there come a time when it was**  
18 **suggested to you that the best means of delivering**  
19 **the discount to Barclays was by defaulting on the**  
20 **repo?**  
21 A. Again, I don't -- I don't agree with  
22 the characterization of the best way to deliver  
23 the discount. I think what was clear on the  
24 Friday, in part because of the difficulties that  
25 we have talked about, but also because the repo

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Issues on Deal," Mr. Reilly writes -- I'm down at**  
3 **paragraph 3 -- "Not clear on the amount of block**  
4 **discount or how we make it happen. Defaulting on**  
5 **repo could be the best, as discount could be taken**  
6 **from haircut. If not that, then we need to give**  
7 **business an allocation of block discount so they**  
8 **can mark down the books tonight. Does that create**  
9 **a problem, as it could tip the broker early?**  
10 **Would we rather have that be in the sale price**  
11 **tomorrow?"**  
12 **Do you see that portion?**  
13 A. I do.  
14 **Q. What did you understand Mr. Reilly to**  
15 **be suggesting in this e-mail when he said,**  
16 **defaulting on repo could be the best as the**  
17 **discount could be taken from the haircut?**  
18 A. Again, I don't have a recollection of  
19 this on the Thursday, but in reading the e-mail  
20 here, you know, what Jerry is suggesting is that  
21 the repo transaction is a way in which we could  
22 deliver collateral to Barclays and that as a basic  
23 concept, the financing haircut is a similar  
24 concept to the item that we were talking about  
25 earlier, which is Barclays' buying collateral for

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 less than the marks to reflect the size of their  
3 purchase and the volatility of the underlying  
4 assets.  
5 **Q. So to put that at least in my layman's**  
6 **terms, that would be using the haircut on the repo**  
7 **as a replacement for the markdown of the value**  
8 **shown on the books?**  
9 MR. BERNSTEIN: Objection,  
10 mischaracterizes his testimony.  
11 A. What I would say is not how I would  
12 think of it as a replacement. They were -- they  
13 are comparable concepts, but the repo transaction  
14 was, again, a way in which we could deliver  
15 specific assets to Barclays at a specific price,  
16 which is what the original deal intended, but it  
17 was a different thing.  
18 **Q. Well, if the repo is used to deliver**  
19 **assets to Barclays at a specific price and**  
20 **Barclays gave \$45 billion and received 50 billion**  
21 **in collateral, does that mean Barclays bought**  
22 **50 billion in collateral for \$45 billion?**  
23 A. If the -- if they received all their  
24 collateral and that was the cash that came to the  
25 firm, then, yes, they received \$49 billion of

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 but --  
3 **Q. Apart from meeting with your lawyers,**  
4 **did you talk to anyone about the fact that your**  
5 **deposition was being taken today?**  
6 A. There are some people in the wealth  
7 division that are aware that I am being deposed.  
8 **Q. Did you talk to them for any reason**  
9 **other than to explain your absence? Did you talk**  
10 **to them about the substance of what you would be**  
11 **testifying about?**  
12 A. No, no.  
13 **Q. Have you spoken to anyone else who has**  
14 **had their deposition taken in this matter?**  
15 MR. BERNSTEIN: I presume you mean  
16 about the deposition?  
17 MR. GAFFEY: Yeah, sure.  
18 MR. BERNSTEIN: As opposed to at some  
19 point in his life about something else.  
20 MR. GAFFEY: Yes. But "no" would  
21 cover both.  
22 A. But I meant about the deposition.  
23 **Q. OK. Now, up at the top of this,**  
24 **Mr. Felder writes to Reilly, Lowitt, Gelband, copy**  
25 **Kelly and Lee, "The Barclays guys chose the**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 collateral -- \$50 billion of collateral for the  
3 cash.  
4 **Q. Further up in the e-mail, you write to**  
5 **Mr. Reilly, Gelband, with copies to Kelly, Felder**  
6 **and Lee, "Jerry, please set up a meeting first**  
7 **thing this morning to work through these issues**  
8 **with Mike, Eric and Hyung."**  
9 A. That's Hyung Lee.  
10 **Q. "Probably want Martin as well, and how**  
11 **to approach. Must be a huge priority for today.**  
12 **Ian."**  
13 **Why was this a huge priority for that**  
14 **day?**  
15 A. Well, we needed to determine how we  
16 would be able to deliver collateral that was  
17 specified and what Barclays would be paying for  
18 that collateral.  
19 **Q. And the Martin that you are referring**  
20 **to is Martin Kelly?**  
21 A. I believe it would be Martin Kelly  
22 from the context.  
23 **Q. Do you still work with Martin Kelly on**  
24 **a day-to-day basis?**  
25 A. I do not. We speak occasionally,

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 assets. We did not have anything to do with it."  
3 In the context of the e-mails below,  
4 do you have an understanding of what Mr. Felder is  
5 communicating here?  
6 A. He is saying that Barclays' folks, my  
7 understanding would be that what the -- that the  
8 Barclays folks were the ones who decided which  
9 assets they wanted to purchase and which ones they  
10 didn't, so the selection of which assets would be  
11 included was not something driven by the Lehman  
12 folks but by the Barclays folks.  
13 **Q. I am trying to put it in context of**  
14 **the e-mail. Let me suggest it might be a response**  
15 **to paragraph 1 in the bottom e-mail, about whether**  
16 **or not auction rates are included. I don't want**  
17 **you to speculate, but I am wondering if you have**  
18 **any knowledge of what it is Mr. Felder meant when**  
19 **he wrote this.**  
20 A. I don't know what Mr. Felder meant  
21 when he wrote this.  
22 **Q. Mr. Lowitt, you have before you what**  
23 **has previously been marked as Deposition**  
24 **Exhibit 14. And with the exclusion we talked**  
25 **about before, the top two lines that say "unknown**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **and sent," have you seen the text of this e-mail**  
3 **before?**  
4 A. Yeah, I don't have a recollection of  
5 it besides in the preparation for the deposition.  
6 Q. In the bottom e-mail, from you to  
7 Gelband, Kirk and Beldner, copies to Tonucci,  
8 Reilly and Kelly, you say, "Today was very bad  
9 with very large number of surprises, increased  
10 requirement of 7 or so billion. Cannot get  
11 through tomorrow if not tighter. Not sure what to  
12 suggest other than someone makes ensuring great  
13 discipline the number one priority. Let's huddle  
14 in the morning to see the best way forward. Also  
15 need to shrink matchbook, which as of yesterday  
16 was much larger than expected. Jerry and Martin  
17 have details. Ian."  
18 What were you referring to when you  
19 said increased requirement of 7 or so billion?  
20 A. You see here the subject says funding  
21 tomorrow?  
22 Q. Yes.  
23 A. This was referring to the funding  
24 position of the firm on the Wednesday evening  
25 where per the e-mail, there was a number of

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 Q. When you say shrink the matchbook,  
3 what does that mean? I guess you need to explain  
4 the matchbook term.  
5 A. It means you could be longer Treasury  
6 and shorter Treasury, and shrink it means -- you  
7 know, one is a repo, one is a reverse repo, so  
8 when you repo the collateral out, so shrinking the  
9 matchbook's essentially relating to reducing the  
10 number of repos of collateral where you hold the  
11 collateral and reducing the number of reverse  
12 repos where you reverse the collateral in.  
13 Normally -- that's what it would be.  
14 Q. Could you -- in front of you there  
15 ought to be Exhibit 127 that we just looked at a  
16 moment ago. It is the e-mail, not clear about the  
17 amount of block discount.  
18 A. Yes, I see that.  
19 Q. A few more questions about that. Down  
20 in paragraph 3, when Mr. Reilly writes, "Does that  
21 create a problem, as it could tip the broker  
22 early," what did you understand him to mean?  
23 A. Again, I don't have a recollection of  
24 what that means. Again, as I sort of speculate  
25 from the context, it is you need broker -- the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 surprises vis-a-vis the funding, which I think  
3 would have referred to the fact that people we  
4 thought were going to roll secured funding didn't,  
5 or some of the term repo that we expected to stay  
6 on as term had -- wasn't available to us, which  
7 increased the funding requirement that we had to 7  
8 or so billion dollars. So this was referring to  
9 the funding position of the firm.  
10 When it says, "cannot get through  
11 tomorrow if not tighter," it is saying that our  
12 ability to fund the firm on Thursday requires us  
13 to be extremely disciplined around financing and  
14 funding in one or two, ensuring that the senior  
15 people in fixed income were aware of just how  
16 important this was and how our funding position  
17 was deteriorating.  
18 Q. And what are you referring to when you  
19 talk about the need to shrink the matchbook?  
20 A. Well, the matchbook, there is a book  
21 which has -- you know, assets and liabilities  
22 should be matched. It was consuming some amount  
23 of cash. So shrinking the matchbook was one of  
24 the ways we wanted to improve the liquidity  
25 position of the firm.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 broker-dealer needs to remain in compliance from a  
3 regulatory perspective and regulatory capital  
4 perspective, so he may have been talking about the  
5 implications of dealer marking the books down  
6 would create a problem from a regulatory capital  
7 perspective, but again this is pure speculation.  
8 Q. Is an alternative speculation that  
9 defaulting on the repo could drive the  
10 broker-dealer into a bankruptcy earlier than  
11 planned?  
12 A. Defaulting on the repo? I don't see  
13 why -- I don't read it in that way at all.  
14 Q. And when Mr. Reilly writes, "Would we  
15 rather have that be in the sale price tomorrow,"  
16 do you have an understanding of what he is  
17 communicating to you there?  
18 A. I don't have a recollection of it, but  
19 I think it is a question of do you mark the books  
20 down before the bankruptcy filing or essentially  
21 as part of the bankruptcy filing.  
22 Q. This is written on the 18th and the  
23 sale hearing is going to be conducted before the  
24 bankruptcy court on the 19th, LBI, correct?  
25 A. That is correct.

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you understand this to mean a</p> <p>3 reference to the sale price that will be</p> <p>4 referenced at the bankruptcy hearing the next day?</p> <p>5 MR. BERNSTEIN: Objection, no</p> <p>6 foundation.</p> <p>7 A. I can't say what that would be</p> <p>8 referring to, but -- I can't say what it would be</p> <p>9 referring to.</p> <p>10 (Exhibit 218, document Bates stamped</p> <p>11 42628 marked for identification, as of this</p> <p>12 date.)</p> <p>13 Q. Mr. Lowitt, you have before you what</p> <p>14 we have marked as Deposition Exhibit 218. Do you</p> <p>15 recognize the document?</p> <p>16 A. I don't recall it specifically.</p> <p>17 Q. Have you seen it before?</p> <p>18 A. I don't recall seeing it before. But</p> <p>19 I see that it was sent from me to Paolo.</p> <p>20 Q. In the e-mail sent from you to Paolo,</p> <p>21 the subject is "As matter of urgency need to get</p> <p>22 going on showing THAT the DTCC money is there."</p> <p>23 What did you mean by the DTCC money?</p> <p>24 A. I can't recall what I would have meant</p> <p>25 by that.</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. The text of the e-mail refers to</p> <p>3 the -- well, IT says, "Need proof that lock-up is</p> <p>4 2 billion. Also other unencumbered collateral in</p> <p>5 DTCC we can pledge. Ian."</p> <p>6 Does that e-mail relate to the project</p> <p>7 we were talking about before of identifying</p> <p>8 additional value?</p> <p>9 A. From the context, it suggests that it</p> <p>10 does.</p> <p>11 Q. And having looked at that now, do you</p> <p>12 have -- can you tell me why finding additional</p> <p>13 value would require looking for unencumbered</p> <p>14 collateral in DTCC?</p> <p>15 A. I can't say why it would be in DTCC</p> <p>16 rather than unencumbered collateral in aggregate.</p> <p>17 Our exercise was around unencumbered collateral</p> <p>18 whether it was in DTCC or any other depository or</p> <p>19 location.</p> <p>20 Q. Why were you describing this as a</p> <p>21 matter of urgency on Friday, September 19, at</p> <p>22 1:36 p.m. eastern time? Note that the time there</p> <p>23 is GMT.</p> <p>24 A. Well, again, to the discussion we had</p> <p>25 earlier, finding sources of value was an important</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 exercise for us on the Friday. You can see here</p> <p>3 that the estimate of the 15c3 lock-up at that</p> <p>4 point was 2 billion. It turned out as a result of</p> <p>5 the work that was done that the amount of the</p> <p>6 lock-up was less than that. But it was obviously</p> <p>7 an early estimate of it as high as \$2 billion.</p> <p>8 Q. Were you describing this as a matter</p> <p>9 of urgency based in any part on your conversation</p> <p>10 that morning with Mr. Ricci?</p> <p>11 A. The whole exercise of identifying</p> <p>12 additional collateral, which as we talked about</p> <p>13 was a result of a conversation with Bart as well</p> <p>14 as with Rich Ricci, was a very important exercise</p> <p>15 for us on the Friday, which is why I think I would</p> <p>16 have talked about it in this way.</p> <p>17 Q. Did you think you were at some degree</p> <p>18 of professional risk if that project was</p> <p>19 unsuccessful?</p> <p>20 A. No, I don't recall feeling that.</p> <p>21 (Exhibit 219, document Bates stamped</p> <p>22 138017 marked for identification, as of this</p> <p>23 date.)</p> <p>24 Q. You have before you, Mr. Lowitt, what</p> <p>25 we have marked as Deposition Exhibit 219. Do you</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 recognize the document?</p> <p>3 A. I don't recall the e-mail</p> <p>4 specifically.</p> <p>5 Q. It appears to be an e-mail from you to</p> <p>6 Mr. McDade.</p> <p>7 A. Yes, it does.</p> <p>8 Q. And the subject says "CLS money all</p> <p>9 snarfed up by city. The 15c3 lock-up looks OK at</p> <p>10 1.3 billion. Good faith not. So we are short</p> <p>11 1.7 billion. The TBA and FX settlement don't</p> <p>12 work. We did find 5 billion of exchange listed</p> <p>13 options which we are investigating. Ian."</p> <p>14 Can you explain to me what it is you</p> <p>15 are reporting to Mr. McDade here?</p> <p>16 A. Yeah. There are a series of issues</p> <p>17 obviously. Not issues, items. CLS refers to</p> <p>18 money that we had pledged to Citi to insure that</p> <p>19 they would continue to operate as our CLS bank, so</p> <p>20 that's the bank that performs the FX settlements</p> <p>21 on behalf of -- that was performing FX settlements</p> <p>22 on behalf of Lehman Brothers. So we posted cash</p> <p>23 to them probably on the Thursday, and this</p> <p>24 suggests that they had not released it, they had</p> <p>25 taken it all themselves.</p>

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 The 15c3 lock-up, so this is now  
3 saying what we think the value of the 15c3 lock-up  
4 was. So what's the excess in 15c3? Looks like at  
5 that point the estimate was 1.3 billion.  
6 Good faith was another item of --  
7 there was an item called the good faith lock-up,  
8 which again as part of the investigation to  
9 determine sources of value, it was determined that  
10 there was no value that could be included in the  
11 transaction from the line that was called good  
12 faith lock-up. So that is suggesting that if, you  
13 know, your target is 4 billion, that we need  
14 \$1.7 billion of additional value beyond what's in  
15 the 15c3 lock-up.  
16 And TBA and FX settlements don't work,  
17 I think what that was meaning was there was no  
18 additional sources of value in the items of TBA or  
19 FX settlement.  
20 And then it says we did find 5 billion  
21 of exchange listed options which we are  
22 investigating.  
23 So it was a status update for Bart on  
24 a series of things that were going on vis-a-vis  
25 our efforts to determine the extra value.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 where you say, "So we are 1.7 billion short,"  
3 that's one time point. My question goes to what  
4 follows. Did there come a time when the target  
5 was met?  
6 A. I mean there was a time when we had  
7 identified unencumbered collateral and 15c3  
8 lock-up that we had some degree of confidence  
9 represented 3 to 4 billion dollars of value.  
10 Didn't know with certainty, but we believed that  
11 it did represent value of the amount we were  
12 searching for.  
13 Q. Did there come a point where Barclays  
14 indicated that enough extra value had been found  
15 that it was willing to close?  
16 A. I'm not aware of that, but the  
17 transaction went forward, so that seems to  
18 indicate it.  
19 Q. When did you stop looking for  
20 additional assets?  
21 A. I don't recall specifically when we  
22 stopped looking for additional assets.  
23 Q. Do you generally recall that the  
24 search continued into the weekend?  
25 A. I do recall that we were continuing to

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. So you're basically looking in every  
3 corner for this extra value, right?  
4 A. We were looking in a number of places  
5 to determine -- to find extra value.  
6 Q. And the target was \$4 billion?  
7 A. Yeah. My recollection is between 3  
8 and 4, and the math here suggests that what we  
9 were targeting was \$4 billion.  
10 Q. Let me push that a little further.  
11 Rather than suggesting it, does it refresh your  
12 recollection that the target was \$4 billion?  
13 A. My recollection is it was between 3  
14 and 4.  
15 Q. Did there come a point where the  
16 target was reached? Whether it was 3 or 4 billion  
17 dollars or something in between, did there come a  
18 point where the target was reached?  
19 A. I think we identified -- we determined  
20 that the exchange listed options were already  
21 included as part of the business transaction, so  
22 there was no additional value there, and the  
23 additional place where we found the value was in  
24 the unencumbered collateral in the various depots.  
25 Q. As of the writing of Exhibit 219,

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 work through the weekend, and I do recall that we  
3 shared a schedule of unencumbered collateral with  
4 the creditors' committee on the Sunday.  
5 Q. And who is the "we" who shared the  
6 schedule of unencumbered collateral with the  
7 creditors' committee on Sunday? Is that a  
8 meeting? And if so, who is at it?  
9 A. I think -- my recollection is a  
10 schedule was delivered, so there were big thick  
11 piles of paper which included all the collateral  
12 that was included on that schedule, and that  
13 schedule was delivered to a group of people  
14 representing the creditors' committee in another  
15 room at Weil.  
16 Q. Why was it delivered to the creditors'  
17 committee?  
18 A. I can't say specifically. I assume  
19 because they wanted to review it.  
20 Q. Did you deliver it to the creditors'  
21 committee?  
22 A. I don't recall being the person  
23 delivering it.  
24 Q. Did you cause it to be delivered to --  
25 did somebody under your supervision deliver it?

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. My recollection is that either -- I  
3 would expect that either Paolo or Robert Azerad  
4 would have delivered it, but I can't be precise.  
5 **Q. Other than thinking they had a reason**  
6 **they wanted to see it, do you have any**  
7 **recollection of the reason this schedule was given**  
8 **to the creditors' committee?**  
9 MR. BERNSTEIN: Objection, asked and  
10 answered.  
11 A. I don't have anything additional to  
12 say.  
13 **Q. Before you, Mr. Lowitt, is what we**  
14 **have marked as Deposition Exhibit 220, a two-page**  
15 **document. Have you seen the document before?**  
16 MS. HNATT: Did you say two-page  
17 document?  
18 MR. GAFFEY: I did.  
19 MR. BERNSTEIN: Mine is one.  
20 MR. GAFFEY: You know what? Let's  
21 just -- I'll sort that out during a break  
22 and we will come back to the document.  
23 MR. BERNSTEIN: OK.  
24 (Exhibit 220 withdrawn)  
25 (Exhibit 221, document Bates stamped

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Q. Do you have any knowledge of any**  
3 **documenting going on after this point?**  
4 A. I mean, I was aware that there was  
5 documentation of the transaction that was  
6 occurring over the weekend following the agreement  
7 with the bankruptcy court, but I don't have any  
8 knowledge specifically of what documentation  
9 needed to be completed.  
10 **Q. And did you -- I may have asked you**  
11 **this before, but just so it is in this section,**  
12 **were you involved in that documenting over the**  
13 **weekend?**  
14 A. I was not.  
15 **Q. Did you ever see it?**  
16 A. I did not. I don't remember seeing  
17 it.  
18 **Q. Further up is a response from you to**  
19 **McDade, Berkenfeld, with a copy to Tonucci, at**  
20 **5:52 a.m. on Saturday, September 20, and it reads,**  
21 **"Did the court accept the 15c3 lock-up and**  
22 **unencumbered box make it through to BarCap? If**  
23 **so, need to make sure documentation is very tight**  
24 **so we can deliver on it. Should have Weil lawyers**  
25 **work closely with Paolo on it. Obviously critical**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 137537 marked for identification, as of this  
3 date.)  
4 **Q. Before you, Mr. Lowitt, is what we**  
5 **have marked as Deposition Exhibit 221, an e-mail**  
6 **from Bart McDade to you at the top. Have you seen**  
7 **the document before?**  
8 A. I don't recall the document  
9 specifically, but I have seen it as part of my  
10 preparation.  
11 **Q. The earliest e-mail in the chain is**  
12 **from you to McDade, September 19 at 7:12 p.m.**  
13 **Subject, "Please send word when you are done.**  
14 **Ian."**  
15 **What were you referring to there?**  
16 A. Again, I don't have a specific  
17 recollection, but given from the timing of it and  
18 the context, it suggests that I would -- I am  
19 asking Bart to say when he is completed with the  
20 bankruptcy hearing with the judge.  
21 **Q. And Mr. McDade responds, "The conclave**  
22 **is over. We are part of BarCap," exclamation**  
23 **point, "subject to documenting."**  
24 **Do you see that?**  
25 A. I do.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **we get this right. Congrats again. Ian."**  
3 **When you refer to the documentation**  
4 **needing to be "very tight," are you referring to**  
5 **documentation about 15c3 lock-up and unencumbered**  
6 **box?**  
7 A. The sense of it suggests that.  
8 **Q. Did you ever see any documentation**  
9 **concerning the 15c3 lock-up and unencumbered box?**  
10 A. I didn't read through the contract,  
11 no.  
12 **Q. Do you know if Paolo worked with**  
13 **lawyers on putting that documentation together?**  
14 A. I don't know with certainty.  
15 **Q. Do you have any general recollection**  
16 **of that?**  
17 A. My recollection is Paolo talking with  
18 some of the folks at Barclays about this, but I  
19 don't have a specific recollection about him  
20 talking to lawyers.  
21 **Q. Do you have any recollection about him**  
22 **being involved in any documentation concerning the**  
23 **15c3 lock-up and the unencumbered box?**  
24 A. I mean he was the person who knew a  
25 great deal about both of those two items, so I



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1 LOWITT - HIGHLY CONFIDENTIAL  
2 would have expected him to be involved, but I  
3 don't have a specific knowledge of whether he was  
4 or he wasn't.

5 Q. Now, apart from the search for  
6 additional value that we have been talking about,  
7 give me a general idea of what your activities are  
8 on the Friday and through the weekend before the  
9 deal was closed.

10 MR. BERNSTEIN: Can I just clarify,  
11 when you say on the Friday, he has already  
12 talked a lot about on the Friday.

13 MR. GAFFEY: That's a good point.

14 Q. Let's go to the evening of the  
15 Friday -- actually after you wrote this e-mail to  
16 Mr. McDade, at 1 in the morning on Saturday. What  
17 did you do during the weekend?

18 A. Again, I have a hazy recollection.  
19 But I -- again, I was very tired, but I do have  
20 remembrances of spending time waiting at the Weil  
21 offices to answer specific questions about  
22 settlement and other issues which were a subject  
23 of discussion in the -- on the Sunday.

24 Q. What are you referring to when you  
25 refer to settlement?

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 of speaking with Bart, but in all likelihood I  
3 would have called him. I wasn't going to not call  
4 the president of the firm.

5 Q. Do you have a general recollection of  
6 speaking to him in person or over the phone over  
7 the weekend?

8 A. Well, I believe I would have spoken to  
9 him over the phone on Saturday morning, and then I  
10 think we were both at the Weil offices on --  
11 certainly on the Sunday.

12 Q. As you sit here today, looking at  
13 Exhibit 221, do you have any knowledge as to  
14 whether there was any particular topic Mr. McDade  
15 wanted to talk to you about when he wrote this  
16 e-mail?

17 A. Well, I think that again it is -- I  
18 don't have a specific recollection, but from the  
19 sense of the e-mail, it was to answer the  
20 questions that I asked of him.

21 Q. Did you get an answer to the question  
22 you asked of him as to whether the court accepted  
23 the 15c3 lock-up and unencumbered box make it  
24 through to BarCap?

25 A. I don't have a recollection of that,

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1 LOWITT - HIGHLY CONFIDENTIAL

2 A. Well, there was a series of questions  
3 about whether Barclays would step into Lehman's  
4 shoes vis-a-vis settlement obligations that  
5 existed in the coming week, and there were  
6 representatives from a number of different  
7 organizations, including DTCC and Chase, that were  
8 discussing these items with folks from Barclays,  
9 and on occasion people would ask questions about  
10 elements of that.

11 Q. And what was the area of knowledge or  
12 expertise that you lent to that discussion?

13 A. You know, it was familiarity with  
14 elements of Lehman's operational processes or at  
15 least knowing who within Lehman would be better  
16 equipped to address those questions.

17 Q. Now, in the e-mail that we have marked  
18 as -- series of e-mails that we have marked as  
19 Exhibit 221, the one at the top, Mr. McDade to  
20 you, says, "Can you call me at home," and that's  
21 at 10:51 p.m. -- 10:51 a.m. on Saturday,  
22 September 20, when we convert to GMT time.

23 Did you speak to Mr. McDade at home on  
24 Saturday morning.

25 A. I don't have a specific recollection

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1 LOWITT - HIGHLY CONFIDENTIAL

2 but we did begin working, once the transaction  
3 closed, on both of these items, so I feel  
4 confident, but I don't have a specific  
5 recollection that Bart would have communicated to  
6 me that these were both part of the transaction.

7 Q. Just sort of focus where you are and I  
8 will give you the two-page version of that  
9 version.

10 MR. GAFFEY: Can we just substitute --  
11 do you mind if we unmark that and mark that  
12 as 220?

13 MR. BERNSTEIN: Fine.

14 Would now be a good time for a break?

15 THE WITNESS: Yes.

16 (Exhibit 220, document Bates stamped  
17 10298186 marked for identification as of  
18 this date.)

19 (Recess)

20 BY MR. GAFFEY:

21 Q. Mr. Lowitt, could you go back to in  
22 the pile in front of you Exhibit 23, please.

23 A. Yes.

24 Q. We talked a bit about this a moment  
25 ago where I asked you about the language in these

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 e-mails that referred to marking of the positions,  
3 and what you meant was for BarCap to mark the  
4 positions further, and I think you said this was  
5 the asset-by-asset assessment that was being done;  
6 is that right?  
7 A. Yes, I think that's what we talked  
8 about before.  
9 Q. Now, the financial schedule we looked  
10 at earlier, one-page financial schedule, reflected  
11 the difference between the price Barclays agreed  
12 to pay and the amount shown on Lehman's books as  
13 of September 16, correct?  
14 MR. HUME: Objection, lacks  
15 foundation. Which schedule?  
16 Q. Exhibit 19 that's in front of you  
17 there.  
18 A. I think that --  
19 Q. Do you have 19 there?  
20 A. I have 19.  
21 Q. That's the schedule I am referring to.  
22 That schedule reflects the values for the assets  
23 that reflect the difference between the amounts  
24 shown on Lehman's books and the amount Barclays  
25 was willing to pay, correct?

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 have to do in the exercise that I think Jerry is  
3 referring to on Exhibit 23 is come up with a set  
4 of assets which on a -- which reflects the amount  
5 that Barclays is going to pay within that asset  
6 category that is consistent with Exhibit 19.  
7 MR. BERNSTEIN: Can I just -- can I --  
8 this is the problem with having a live  
9 transcript. The second sentence on the live  
10 transcript begins, "I want read it that  
11 way," and what I heard was, "I wouldn't read  
12 it that way."  
13 Q. So I asked you a little earlier  
14 whether in the exercise that led to the completion  
15 of Exhibit 19, the top-down view was to arrive at  
16 the broad price then. And to put another  
17 question, so the exercise that led to Exhibit 19  
18 was the top-down process to determine broadly the  
19 difference between the amount on Lehman's books  
20 and the amount that Barclays would pay?  
21 A. I don't think that's completely right.  
22 I think that's the -- what led to Exhibit 19 was a  
23 view on the Lehman side of the combination of what  
24 was emerging from the sort of bottoms up with what  
25 was happening top down. It wasn't just the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 MR. BERNSTEIN: Objection, asked and  
3 answered.  
4 A. What this reflects is for the  
5 different -- at the broad level of the asset  
6 categories, an amount that Barclays was going to  
7 pay to Lehman for assets in those asset categories  
8 which reflected the combination of those assets  
9 they wanted to purchase as well as the price that  
10 they were willing to pay, as we discussed, for the  
11 large purchases as well as the volatility of the  
12 assets.  
13 Q. Taking a look at Exhibit 23, which  
14 refers to Barclays and the positions, is there  
15 further marking down going on here when it is done  
16 on an asset-by-asset basis?  
17 A. It is not additional. I wouldn't read  
18 it that way. It is an asset-by-asset buildup that  
19 gets us to the purchase. But what you see on  
20 Exhibit 19 is the amount after the -- that  
21 Barclays is willing to pay. It doesn't reflect  
22 what was the amount that was the amount that was  
23 on -- that those particular assets were on  
24 Lehman's books at.  
25 So the combination of things that you

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 top-down view. It was a combination, and it was  
3 iterative through the course of the evening.  
4 Q. And now looking again at Exhibit 23,  
5 which is written on the 17th of September, this is  
6 the security-by-security review you talked about,  
7 yes?  
8 A. It is the effort to say, just pick a  
9 number. There are \$2.7 billion of mortgages on  
10 Exhibit 19. What are the specific positions that  
11 are going to get transferred over to Barclays that  
12 they will be paying 2.7 billion for, that  
13 represents the price they are willing to pay which  
14 is less than the amount that would have been the  
15 book value.  
16 Q. So the question that's being answered  
17 on the 17th is which particular securities within  
18 the category of mortgages will be priced in a way  
19 to add up to the total for mortgages in  
20 Exhibit 19?  
21 A. You mean the September 18, but yes.  
22 Q. Yes. But yes is the answer?  
23 A. I believe, if I am understanding you  
24 correctly, that it is the asset-by-asset view  
25 that's going to -- because in the end, what was

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 necessary to complete the transaction was a</p> <p>3 specific set of assets were going to be delivered</p> <p>4 at a specific set of prices. In aggregate by</p> <p>5 category, we are going to be consistent with 19,</p> <p>6 if it didn't shift in some way, rather than just</p> <p>7 something that you saw on 19, on Exhibit 19.</p> <p>8 Q. Well, what do you mean if it didn't</p> <p>9 shift in some way?</p> <p>10 A. Again, the values that -- the values</p> <p>11 of assets may have changed, some assets that --</p> <p>12 that valuations of those may have changed. I</p> <p>13 didn't mean anything more than that.</p> <p>14 Q. As a result of the asset-by-asset</p> <p>15 review that was going on, that you are writing</p> <p>16 about on the 17th, did the delta between the</p> <p>17 amount shown on Lehman's books and the price</p> <p>18 Barclays was willing to pay grow larger?</p> <p>19 A. I think as we said, we didn't actually</p> <p>20 do the exercise that we talked about on Exhibit</p> <p>21 23. It was -- this was a series of correspondence</p> <p>22 about what we would need to have done, but we</p> <p>23 didn't sit down with Barclays, we didn't sit down</p> <p>24 and actually re-mark any of the positions. It</p> <p>25 was -- it was a reference to what we would have</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 needed to have done if the transaction had</p> <p>3 proceeded in the earlier form rather than the repo</p> <p>4 form.</p> <p>5 Q. Were the individual positions being</p> <p>6 marked for the purpose of putting them into the</p> <p>7 repo?</p> <p>8 A. No.</p> <p>9 Q. Would you need to do --</p> <p>10 A. I don't believe so.</p> <p>11 Q. Would you need to -- to put them into</p> <p>12 repo, would you need a schedule of individual</p> <p>13 positions?</p> <p>14 A. The repo, the advantage of the repo</p> <p>15 was that there was collateral that was at the Fed,</p> <p>16 that collateral was delivered to Chase, Chase was</p> <p>17 supposed to deliver that collateral to Barclays at</p> <p>18 BoNY, Bank of New York, and as a result, there was</p> <p>19 no requirement to go into separate schedules and</p> <p>20 identify specific assets or to mark them in any</p> <p>21 particular way.</p> <p>22 Q. Because they are marked by BoNY when</p> <p>23 they're received, BoNY in the triparty; is that</p> <p>24 correct?</p> <p>25 A. And by Chase when they return from the</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Fed.</p> <p>3 Q. OK. I am going to show you a new and</p> <p>4 improved Exhibit 220. I have marked the correct</p> <p>5 document this time. And just so we don't have a</p> <p>6 gap in numbering, I have re-marked Exhibit 66B</p> <p>7 also as Exhibit 220.</p> <p>8 MR. BERNSTEIN: So this is both 66B</p> <p>9 and 220.</p> <p>10 MR. GAFFEY: Yeah. We will call it</p> <p>11 220 for the purpose of this deposition. I</p> <p>12 just didn't want a numbering gap.</p> <p>13 MR. BERNSTEIN: Sure.</p> <p>14 BY MR. GAFFEY:</p> <p>15 Q. Let me know when you have had a chance</p> <p>16 to look at what we have marked as Exhibit 220,</p> <p>17 Mr. Lowitt, and tell me whether you recall seeing</p> <p>18 it before.</p> <p>19 A. I don't have a specific recollection</p> <p>20 of this chain of e-mails.</p> <p>21 Q. Do you know who David Aronow is?</p> <p>22 A-R-O-N-O-W.</p> <p>23 A. David was one of the people in</p> <p>24 operations who worked for Alastair Blackwell.</p> <p>25 Q. Would David Aronow have been involved</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 in this security-by-security marking we were</p> <p>3 talking about before with respect to Exhibit 23?</p> <p>4 A. There was no security-by-security</p> <p>5 marking for Exhibit 23. There was no effort</p> <p>6 that -- in other words, there was a project that</p> <p>7 was being identified as a piece of work. It</p> <p>8 wasn't a piece of work that actually took place.</p> <p>9 Q. OK. In his e-mail to Mr. Tonucci,</p> <p>10 copy to you, Mr. Aronow says, "Paolo, apologies if</p> <p>11 you already know this. Barclays' operations team</p> <p>12 has recalculated the value of the collateral that</p> <p>13 they received from us last night and they are more</p> <p>14 than fully collateralized, including the haircut</p> <p>15 applied. Senior management at Barclays I am told</p> <p>16 are very satisfied with the results of the effort.</p> <p>17 They are not interested in moving forward with any</p> <p>18 more collateral movements from us to them today</p> <p>19 through the process we built and applied</p> <p>20 yesterday. They have said that we can now stand</p> <p>21 down with the process we had in place to move</p> <p>22 collateral."</p> <p>23 Do you know what Mr. Aronow was</p> <p>24 referring to when he communicated that the</p> <p>25 Barclays operation team had recalculated the value</p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **of the collateral they received from Lehman?**  
3 A. I mean I can't know precisely what  
4 Dave meant by this, but I would assume what  
5 Barclays' operations was doing was looking at the  
6 collateral that was in their BoNY accounts and  
7 assessing the value of that collateral, probably  
8 utilizing the BoNY triparty system to assess what  
9 they had received and what the value of that was.  
10 **Q. When Mr. Aronow writes that Barclays**  
11 **was now "more than fully collateralized, including**  
12 **the haircuts applied," what do you understand that**  
13 **to mean?**  
14 A. Again, I don't know what Dave was  
15 referring to.  
16 **Q. All right. Well, if you had received**  
17 **this in realtime on the 19th of September, give me**  
18 **your best estimate of what you would have**  
19 **understood it to mean or whether you would have**  
20 **had to write back to David to say what do you mean**  
21 **by this.**  
22 MR. HUME: Objection, calls for  
23 speculation.  
24 A. I don't know what David was referring  
25 to specifically with that. I could speculate if

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. That's what David is saying.  
3 **Q. Do you have any independent knowledge**  
4 **of a process -- of Lehman standing down on that**  
5 **process?**  
6 A. I mean at some point, we weren't  
7 moving additional collateral, but I'm not aware  
8 specifically of, you know, a time or a place where  
9 people were told no additional work needed to get  
10 done.  
11 **Q. Do you have -- without regard to the**  
12 **documents, sir, do you have any knowledge of a**  
13 **point during this week where Barclays said we have**  
14 **enough collateral?**  
15 A. I am not aware of that, no. I don't  
16 recall being aware of that.  
17 **Q. Now, did this, the project we have**  
18 **been talking about of looking for additional**  
19 **assets, did that project ultimately succeed? Did**  
20 **you find enough additional assets?**  
21 A. I think we identified unencumbered  
22 collateral and we understood the excess collateral  
23 in the 15c3 lock-up were in the range that we were  
24 looking for.  
25 MR. GAFFEY: Can we mark that, please.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 you would like.  
3 **Q. No, thank you.**  
4 **Did it ever come to your attention**  
5 **that Barclays was more than fully collateralized?**  
6 A. Again, I wasn't aware of Barclays  
7 being fully collateralized or not. I know that  
8 there were a lot of difficulties associated with  
9 the collateral movement from Chase to BoNY and  
10 that that didn't proceed smoothly.  
11 **Q. Do you know what Mr. Aronow was**  
12 **referring to when he refers to "the process we had**  
13 **in place to move collateral"?**  
14 A. Again, from the context, I would  
15 suggest that it is, or I would understand it to be  
16 the collateral that was going to move from Chase  
17 to BoNY because, you know, the Fed repo was taken  
18 down, and rather than transact through JP Morgan,  
19 the new repo was going to get booked through BoNY.  
20 That process of moving the collateral was not a  
21 standard one, and so a process needed to be  
22 developed and then applied.  
23 **Q. And at some point apparently Lehman**  
24 **was told it could stand down with the process,**  
25 **yes?**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 (Exhibit 222, e-mail dated 9/20/2008  
3 at 1:42:32 marked for identification, as of  
4 this date.)  
5 **Q. We have marked as Exhibit 222,**  
6 **Mr. Lowitt, a one-page chain of e-mails. Take a**  
7 **look through it and tell me whether you have seen**  
8 **it before.**  
9 A. I don't recall the e-mail trail  
10 specifically.  
11 **Q. On the lower e-mail from you to Paolo**  
12 **Tonucci, copy to Steven Berkenfeld, the subject is**  
13 **"Thanks for all your help getting us over the goal**  
14 **line. We did it," with exclamation points.**  
15 **Is "we did it" a reference to we found**  
16 **enough additional value to transfer to Barclays?**  
17 A. I think it's -- that the transaction  
18 was approved by the court would have been what I  
19 think we would have referred to as getting over  
20 the goal line. And we participated in that.  
21 **Q. And what was Mr. Tonucci's**  
22 **participation in getting you over the goal line --**  
23 **withdrawn. I will get to that in a minute.**  
24 **That being so, there is no reference**  
25 **in here to the bankruptcy court or hearing or**

<p style="text-align: right;">Page 174</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>decision. It is speaking in terms of 15c3 lock-up</b></p> <p>3 <b>money and the unencumbered box. By that, were you</b></p> <p>4 <b>referring to the result in the hearing of the</b></p> <p>5 <b>bankruptcy court where the sale was approved?</b></p> <p>6 MR. BERNSTEIN: Objection,</p> <p>7 mischaracterizes the document.</p> <p>8 MR. HUME: I object to vague and</p> <p>9 ambiguous, the question.</p> <p>10 A. Again, my -- you know, we had just</p> <p>11 gone through an extremely trying period in</p> <p>12 aggregate. You know, dealing with the bankruptcy</p> <p>13 initially and then all the work to get a deal done</p> <p>14 with Barclays. And this is on the Saturday saying</p> <p>15 we got the approval or the transaction was</p> <p>16 approved, but we have to do more work. We have to</p> <p>17 ensure that the 15c3 lock-up money and the -- you</p> <p>18 know, we could free that up and transfer it, and</p> <p>19 we can also transfer the collateral in the</p> <p>20 unencumbered box to Barclays.</p> <p>21 Saying that everything that we have</p> <p>22 had to deal with has proven to be complicated and</p> <p>23 difficult, we wanted to make sure that we had a</p> <p>24 team on it to ensure that we are organized to</p> <p>25 effect that.</p>	<p style="text-align: right;">Page 175</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. And how was it that Mr. Tonucci's</b></p> <p>3 <b>activities helped get over the goal line?</b></p> <p>4 A. Well, it was a combination of things.</p> <p>5 One was the work that he had done in identifying</p> <p>6 the excess collateral, as well as the 15c3 excess.</p> <p>7 It was also all the work that was done in</p> <p>8 effecting the movement of collateral from Chase to</p> <p>9 BoNY, as well as helping to keep the firm sort of</p> <p>10 funded over that period.</p> <p>11 <b>Q. And Mr. Tonucci responds in response</b></p> <p>12 <b>to your direction to coordinate with Berkenfeld</b></p> <p>13 <b>and the additional work that needs to be done,</b></p> <p>14 <b>"Agreed. We will use Robert for this. Have</b></p> <p>15 <b>confidence he knows how to get done."</b></p> <p>16 <b>Is that a reference to Robert Azerad?</b></p> <p>17 A. I believe it is.</p> <p>18 <b>Q. Now, I asked you before if in the</b></p> <p>19 <b>course of the project to find additional assets</b></p> <p>20 <b>you felt that you were at some degree of</b></p> <p>21 <b>professional risk if that goal was not achieved.</b></p> <p>22 <b>Do you recall that?</b></p> <p>23 A. I do recall you asking that.</p> <p>24 <b>Q. And you told me no?</b></p> <p>25 MR. BERNSTEIN: Mischaracterizes his</p>
<p style="text-align: right;">Page 176</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>testimony.</b></p> <p>3 <b>Q. Well, did you feel some degree of</b></p> <p>4 <b>professional risk if the goal was not achieved</b></p> <p>5 <b>with respect to finding additional assets?</b></p> <p>6 MR. BERNSTEIN: Objection, asked and</p> <p>7 answered.</p> <p>8 You can answer it again.</p> <p>9 A. I think I said I didn't recall</p> <p>10 specifically.</p> <p>11 <b>Q. Well, you write to Mr. Tonucci on the</b></p> <p>12 <b>20th of September at 9:33 a.m., "You need to be</b></p> <p>13 <b>close to it. If we don't succeed, you and I are</b></p> <p>14 <b>toast despite all our heroics."</b></p> <p>15 <b>Does that refresh your recollection?</b></p> <p>16 A. I think that -- what I think was</p> <p>17 described here is we both worked fantastically</p> <p>18 hard to get the transaction to a point where we</p> <p>19 could fund the firm through the Friday where we</p> <p>20 could meet the requirements of the -- we could</p> <p>21 support the transaction as it was negotiated, and</p> <p>22 that we didn't want to sort of fail at the last</p> <p>23 minute vis-a-vis our ability to move the</p> <p>24 collateral and to resolve the 15c3 lock-up.</p> <p>25 <b>Q. Is that what you meant when you said</b></p>	<p style="text-align: right;">Page 177</p> <p>1 <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>to Mr. Tonucci, "if we don't succeed, you and I</b></p> <p>3 <b>are toast despite all our heroics"?</b></p> <p>4 A. That's what I think I could have meant</p> <p>5 by that.</p> <p>6 <b>Q. Could you also have meant by that if</b></p> <p>7 <b>the deal didn't close, the offer you accepted for</b></p> <p>8 <b>approximately \$10 million in compensation from</b></p> <p>9 <b>Barclays would not go into effect?</b></p> <p>10 A. I don't think that's what I was</p> <p>11 referring to. I think we were anxious to have a</p> <p>12 trade succeed because of what it meant for the</p> <p>13 whole franchise and all the employees of Lehman</p> <p>14 Brothers, as well as to see the franchise continue</p> <p>15 in some form, given the amount of work we had put</p> <p>16 into building it up over the years, as well as</p> <p>17 having a sort of functioning entity to continue to</p> <p>18 support the various estates.</p> <p>19 So I think we were anxious for it to</p> <p>20 succeed for a range of reasons.</p> <p>21 <b>Q. And when you refer to the benefits of</b></p> <p>22 <b>this to the whole franchise and the employees and</b></p> <p>23 <b>functioning entity, is that what you meant when</b></p> <p>24 <b>you wrote to Mr. Tonucci referring to "you and I</b></p> <p>25 <b>being toast"?</b></p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 MR. BERNSTEIN: Objection, asked and  
3 answered, and argumentative.  
4 You can answer it one more time and  
5 then we will move on.  
6 A. I think it means -- I don't see it as  
7 referring only to Paolo and myself. I think of it  
8 as if we are not successful with this despite all  
9 the hard work that everybody has put into this,  
10 that it will be -- that it would have been in  
11 vain.  
12 Q. Had you and Mr. Tonucci ever had  
13 discussions, the two of you, about the effect on  
14 your own personal careers if the transaction  
15 didn't close?  
16 A. I don't recall us having that  
17 conversation, and we were so busy with so many  
18 things, I don't believe we would have had that  
19 conversation.  
20 Q. Well, do you know if Mr. Tonucci had  
21 an offer in hand from Barclays during the week  
22 before the closing?  
23 A. He didn't have an offer in the week  
24 before the closing. The deal would have included,  
25 you know, all the employees of LBI having an offer

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 around Mr. Tonucci specifically. There were --  
3 there was a list that had been generated for a  
4 number of people in the corporate area that  
5 Barclays was interested in retaining.  
6 Q. Did this list include Mr. Tonucci?  
7 A. It did.  
8 Q. Did it include Mr. Kelly?  
9 A. It did.  
10 Q. Did it include Mr. Reilly?  
11 A. It did.  
12 Q. Did it include -- I didn't get the  
13 name -- the person who was in charge of tax who  
14 was a direct report to you?  
15 A. Yes, it did.  
16 Q. Did it include Alastair Blackwell?  
17 A. It did.  
18 Q. Did it exclude any of your direct  
19 reports?  
20 A. I can't say with certainty. It was a  
21 list that was -- that had actually been generated  
22 by Lehman prior to the bankruptcy as the list of  
23 people that would receive -- that potentially  
24 would have received various stock awards that  
25 Lehman was contemplating.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 as part of the transaction.  
3 Q. Had you had any conversations with  
4 Mr. Tonucci in the week prior to the transaction  
5 about whether he, Paolo Tonucci, was likely to  
6 find employment with Barclays after the  
7 transaction?  
8 A. I don't recall having that  
9 conversation with Paolo.  
10 Q. Did he ever raise that topic with you,  
11 is there going to be a job for me at Barclays?  
12 A. I don't recall him ever raising it  
13 with me.  
14 Q. Did there ever come a point when you  
15 spoke to Mr. Tonucci who reported directly to you  
16 about whether there would be a job for him at  
17 Barclays?  
18 A. I did speak with Barclays the week  
19 after the transaction closed together with a  
20 number of other folks who were on a list of --  
21 people that Barclays wanted to retain. But that  
22 was only the week after the transaction closed.  
23 Q. When did Barclays make it known to you  
24 that it wanted to retain Mr. Tonucci?  
25 A. Well, there wasn't a communication

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 So it was a lift of a list that had  
3 been developed previously.  
4 Q. On the Friday, the 19th, when the  
5 project was going on to search for additional  
6 assets, during that day, was it matter of any  
7 concern to you that you might not have a position  
8 at Barclays if that project was not successful?  
9 MR. BERNSTEIN: Objection, asked and  
10 answered.  
11 A. I did not -- that was not my focus on  
12 that day, and it was not a concern of mine, I  
13 don't believe.  
14 Q. Was it a focus of yours or matter of  
15 concern to you that if the project of finding  
16 additional value was not successful, your several  
17 direct reports would not have jobs or the  
18 possibility of jobs at Barclays?  
19 A. Again, I was -- we were all working  
20 very hard to ensure a transaction took place  
21 without regard to individual circumstances.  
22 (Exhibit 223, document Bates stamped  
23 10293506 marked for identification, as of  
24 this date.)  
25 Q. Mr. Lowitt, I put before you what we

<p style="text-align: right;">Page 182</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2   have marked as Deposition Exhibit 223. Have you</p> <p>3   seen this document before?</p> <p>4       A. I have not. Or I don't recall seeing</p> <p>5   it before.</p> <p>6       Q. The document is a chain of e-mails,</p> <p>7   the earliest of which is 20th September, 2008, at</p> <p>8   1:04 p.m. from you to Alastair Blackwell with a</p> <p>9   copy to Paolo Tonucci. Subject, "Confirming our</p> <p>10   unencumbered box is now the top priority."</p> <p>11       And in it you say to Mr. Blackwell,</p> <p>12   "Please coordinate with Paolo to do everything</p> <p>13   possible to ensure we have the 1.95 billion of</p> <p>14   collateral identified and ready to move and</p> <p>15   address claims from Chase that they have a claim.</p> <p>16   lan."</p> <p>17       What are you referring to when you</p> <p>18   refer to claims from Chase there?</p> <p>19       A. I am -- again, I don't have a</p> <p>20   recollection of this specifically, but Chase were</p> <p>21   seizing collateral, and so what we needed to do</p> <p>22   was make sure that the collateral that we had</p> <p>23   identified that was unencumbered was -- in fact,</p> <p>24   we were in -- we had the ability to deliver to</p> <p>25   Barclays.</p>	<p style="text-align: right;">Page 183</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2       So I think that this is again about</p> <p>3   operationalizing what had been agreed to, which</p> <p>4   was our ability to deliver the collateral to</p> <p>5   Barclays to satisfy the terms of the transaction.</p> <p>6       Q. OK. So on the Saturday, as far as</p> <p>7   this e-mail reflects anyway, on the Saturday, you</p> <p>8   are looking at whether the -- having found the</p> <p>9   additional value, whether it can actually be --</p> <p>10   you are assuring yourself it can be transferred to</p> <p>11   Barclays, correct?</p> <p>12       A. That's the essence of the e-mail, yes.</p> <p>13       Q. Over the course of the weekend, apart</p> <p>14   from that type of activity, what was found on</p> <p>15   Friday can be transferred to Barclays, were there</p> <p>16   efforts to find still more value?</p> <p>17       A. Again, I can't recall whether there</p> <p>18   were things specifically to add additional value.</p> <p>19   I think that if there were additional efforts, it</p> <p>20   was to sort of understand, in the event some of</p> <p>21   this collateral couldn't be delivered, whether</p> <p>22   there was other collateral that could have been</p> <p>23   delivered to satisfy the requirement under</p> <p>24   whatever the deal was that was agreed.</p> <p>25       Can I have a quick break, please.</p>
<p style="text-align: right;">Page 184</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2       Q. Sure.</p> <p>3       A. Thank you very much.</p> <p>4       (Recess)</p> <p>5       (Exhibit 224, four-page e-mail dated</p> <p>6       9/20/2008 at 6:12 p.m. marked for</p> <p>7       identification as of this date.)</p> <p>8   BY MR. GAFFEY:</p> <p>9       Q. Mr. Lowitt, I am putting before you a</p> <p>10   document we have marked as 224. Take a look at</p> <p>11   that, please, and let me know whether you have</p> <p>12   seen it before.</p> <p>13       A. I don't have a specific recollection</p> <p>14   of seeing this trail of e-mails.</p> <p>15       Q. OK. I should -- I am going to ask you</p> <p>16   a couple of questions about it anyway, but I just</p> <p>17   want to note that as far as I can see on my read,</p> <p>18   you are not within the e-mail chain until the very</p> <p>19   top one that seems to be sent to you as a whole.</p> <p>20   I only see your name at the top.</p> <p>21       But you will see that the e-mail chain</p> <p>22   is a series of communications that start with</p> <p>23   Martin Kelly writing to Robert Azerad, Alastair</p> <p>24   Blackwell and Brett Beldner with some ccs about an</p> <p>25   opening balance sheet that has been requested by</p>	<p style="text-align: right;">Page 185</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2   Barclays. Do you see that?</p> <p>3       A. I do see that on the last page.</p> <p>4       Q. Do you have any independent</p> <p>5   recollection of work being done to prepare an</p> <p>6   opening balance sheet for Barclays?</p> <p>7       A. I don't have an independent</p> <p>8   recollection of that, no, not that I recall.</p> <p>9       Q. And in the e-mail that follows, and</p> <p>10   I'm moving up the page here, 20 September 2008 at</p> <p>11   10:27 a.m. from Azerad to Kelly, Blackwell and</p> <p>12   Felder. Do you see that?</p> <p>13       A. I do see that.</p> <p>14       Q. Azerad refers to a "classification of</p> <p>15   the assets by asset class that should be done by</p> <p>16   end of day today, assuming that what was</p> <p>17   transferred was," and then he has got two items.</p> <p>18   One is, "Repo with Barclays as of Thursday night</p> <p>19   (49 billion-42 billion of securities and 7 billion</p> <p>20   of cash)." Do you see that?</p> <p>21       A. I do see that.</p> <p>22       Q. And then two, "Non-actionable box as</p> <p>23   shown to Barclays on Friday afternoon (1.9 billion</p> <p>24   of collateral). Actual box is slightly bigger</p> <p>25   because it also contains Lehman debt."</p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Do you see that?**  
3 A. I do.  
4 **Q. And do you recognize this to be two of**  
5 **the components of the value that was ultimately**  
6 **transferred to Barclays in the transaction?**  
7 A. I see this as two of the elements of  
8 the transaction, the repo transaction and the  
9 non-actionable box, which I think is shorthand for  
10 or just a different term for the unencumbered  
11 collateral.  
12 **Q. The description of the values there is**  
13 **correct, is it not? 49 billion for the repo and**  
14 **1.9 billion for the unencumbered collateral?**  
15 MR. HUME: Objection, lacks  
16 foundation, vague and ambiguous.  
17 A. Yeah. As I said before, unencumbered  
18 collateral was about a billion nine, and the total  
19 repo was, you know, my recollection, about --  
20 between 49 and 50 billion dollars of collateral  
21 was what was papered, and the cash movement was  
22 about \$45 billion, again from my recollection.  
23 What I will say, I don't think the  
24 7 billion in cash was actually included in the 49.  
25 **Q. Well, there was a point where -- there**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 negotiating team.  
3 **Q. The plan was 42 billion plus 7 billion**  
4 **in cash, correct?**  
5 A. Again, I can't confirm that for you.  
6 That's what it says down on the e-mail.  
7 **Q. Apart from the fact that it says that**  
8 **on the e-mail, sir, do you have any knowledge as**  
9 **to whether the amount of the repo, the collateral**  
10 **in the repo was roughly \$49 billion?**  
11 A. Yeah, my recollection is between 49  
12 and 50 billion dollars.  
13 **Q. Further up the e-mail, there is an**  
14 **e-mail from Paolo Tonucci to Azerad, Kelly,**  
15 **Blackwell and Beldner.**  
16 A. This is the 10:31?  
17 **Q. That's right.**  
18 **And in it Mr. Tonucci writes, "We also**  
19 **need to add the 15c3 cash as a receivable." Do**  
20 **you see that?**  
21 A. I do see that.  
22 **Q. And if you read further up the e-mail,**  
23 **you will see that's calculated -- well, that a**  
24 **series of cash sources are calculated, and I am**  
25 **going to ask you to read through it and then take**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **was 7 billion in cash that was supposed to be**  
3 **included, correct?**  
4 A. Again, I believe that that was how the  
5 49 was -- or 49, 50 was going to get established,  
6 but it didn't move -- I don't believe it all  
7 moved.  
8 **Q. Do you know why the 7 billion did not**  
9 **move?**  
10 A. I don't know why. I know Chase didn't  
11 move it.  
12 **Q. And ultimately Chase's failure to move**  
13 **it was resolved in a settlement that came in**  
14 **December, correct?**  
15 A. I don't know when it happened. I know  
16 there was an ongoing settlement discussion that  
17 Mr. Ricci was involved with.  
18 **Q. Were you involved in any of the**  
19 **discussions that led to that settlement in**  
20 **December?**  
21 A. I was not.  
22 **Q. Do you have any knowledge as to on**  
23 **what terms Chase's failure to move the 7 billion**  
24 **were resolved?**  
25 A. I don't know and I wasn't part of the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **a look at the e-mail from Dan Flemming to Paolo**  
3 **Tonucci, 20 September at 5:01. Read that through.**  
4 A. I have read the E mail.  
5 **Q. Do you see the reference in the 20**  
6 **September 5 -- 17:01 e-mail to a summary of**  
7 **securities in lock-up at JPM for 15c3 EBOC, all**  
8 **caps, and PAIB, all caps?**  
9 A. I do.  
10 **Q. I want to see what your reading is of**  
11 **this, but as I understand the calculations being**  
12 **done here, there is a total of 1.763 billion --**  
13 A. Yeah, my --  
14 **Q. -- identified here; is that right?**  
15 **Are you seeing it that way?**  
16 A. Yeah. My recollection was that the  
17 15c3 excess was about \$1.75 billion, so this would  
18 be consistent with that recollection.  
19 **Q. And at the end of the day, in the**  
20 **event only the security portion of the 15c3 was --**  
21 **well, what was the ultimate amount of 15c3 that**  
22 **went over?**  
23 A. Again, I know that in the final  
24 contract, the amount was about \$560 million.  
25 (Exhibit 225, two-page document Bates



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1 LOWITT - HIGHLY CONFIDENTIAL  
2 stamped 77882 marked for identification, as  
3 of this date.)

4 Q. I put before you Exhibit 225,  
5 Mr. Lowitt. Tell me, please, if you recall seeing  
6 this document before.

7 A. I don't recall seeing this document  
8 before.

9 Q. The chain of e-mails here begins on  
10 the second page with an e-mail -- well, on the  
11 first page it runs over. An e-mail from Paolo  
12 Tonucci sent September 18, 4:07 p.m., to you, copy  
13 to Alastair Blackwell, subject, "First 5 billion  
14 gone."

15 What is that a reference to? Do you  
16 know?

17 A. Again, I would assume this is moving  
18 the collateral from Chase to BoNY.

19 Q. And that's collateral in respect of  
20 the September 18 Lehman-Barclays-BoNY triparty  
21 repo?

22 A. Right. The unwind of the Fed and the  
23 movement of collateral from JP Morgan to BoNY, so  
24 the repo could be booked through BoNY's triparty  
25 rather than Chase's triparty.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 away from funding the street and funding Lehman.  
3 So in addition to taking on the Fed  
4 repo, Barclays were additionally funding Lehman.

5 Q. In a repo transaction separate and  
6 apart from stepping into the Fed repo?

7 A. Separate and apart.

8 Q. OK. And that --

9 A. And that was built up over, I think --  
10 again, I can't say with certainty, but I think it  
11 was probably being built up on the Tuesday and the  
12 Wednesday.

13 Q. Now, on the Thursday in your e-mail  
14 from -- in your e-mail to Blackwell and Tonucci,  
15 you seem to be asking whether we are still  
16 papering the \$18 billion repo with Barclays or is  
17 that all part of the same transfer. Is the  
18 question you are asking whether they are to be  
19 combined, that is the Fed repo and the 18 billion?

20 A. It is saying -- I don't recall it  
21 specifically, but the question would have been,  
22 was Barclays going to continue to fund the  
23 \$18 billion of collateral or cash -- I can't be  
24 sure if it was collateral or cash -- in addition  
25 to what they were doing with the Fed, or was -- or

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1 LOWITT - HIGHLY CONFIDENTIAL

2 Q. The next e-mail up, from you to  
3 Blackwell, September 18, 16:35, you write, "Are we  
4 still papering the 18 billion repo from Barclays  
5 or is that all part of the same transfer? Afraid  
6 that is getting lost in the numbers. Ian."

7 Do you see that?

8 A. I do.

9 Q. Mr. Blackwell responds in the next  
10 e-mail up, "We are not unwinding. It was  
11 15.8 billion last night. We will increase it at  
12 the end of the process."

13 A. I see that.

14 Q. This was just kind of a cry for help  
15 for me. What is the \$18 billion Barclays repo you  
16 are referring to here?

17 A. So you will recall one of those  
18 earlier e-mails that we talked about that the  
19 funding position of the firm was deteriorating  
20 quite rapidly. So on the Wednesday we talked  
21 about the position having deteriorated by  
22 \$7 billion. Barclays was assisting us in our  
23 funding, so Barclays was doing repos with Lehman  
24 and helping to make up the lost funding capacity  
25 that we were experiencing as people were pulling

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 were they in effect going to cancel this  
3 \$18 billion repo that they had outstanding.

4 Q. And that perhaps explains for me  
5 anyway the e-mail you're sending further up,  
6 Lowitt to Blackwell, September 18, 16:44. What --  
7 "Do you mean increase it at the end of the  
8 process? Do you mean that the total repo with  
9 BarCap becomes 15.8 plus 48 or so? What is the  
10 exact number to take out the Fed so it goes up to  
11 63.8?"

12 That's not what happened, right?

13 A. That's not what happened. One way  
14 this could have happened was that Barclays  
15 maintained their \$18 billion repo, which they were  
16 doing through Chase, and in addition to that, they  
17 were going to take on the \$50 billion or so off  
18 the Fed.

19 Q. Now, did Barclays roll a \$15.8 billion  
20 repo --

21 MR. BERNSTEIN: In your last answer  
22 did you say 15 billion or so off the Fed or  
23 50?

24 THE WITNESS: 50. 5-0.

25 Q. Did Barclays roll the \$15.8 billion

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **repo, the one that is referred to here?**  
3 A. They did not.  
4 **Q. Had it been your expectation that they**  
5 **would?**  
6 A. I mean expectation is -- I'm not sure  
7 if that's the right word. I certainly wasn't  
8 aware that they were not going to, but that was  
9 why I was asking the question.  
10 **Q. Were you surprised at the time to**  
11 **learn that they weren't rolling the \$15.8 billion**  
12 **repo?**  
13 A. Again, I don't have a complete  
14 recollection, but I do believe that I -- it was  
15 not expected that they were not going to roll the  
16 15.8 that they had been funding up to that point.  
17 **Q. So did that create -- we have enough**  
18 **to deal with there. Does that create another**  
19 **problem that has to be addressed to replace that**  
20 **funding?**  
21 A. That's the heart of the issue with  
22 Chase, because Chase then had to fund that as a  
23 box position. So Chase effectively stood in to  
24 fund that position on the Thursday evening.  
25 **Q. Did Chase do that, stand in on that**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 meeting with the bankruptcy judge occurs on the  
3 Friday afternoon.  
4 **Q. Mr. Lowitt, I put before you what was**  
5 **previously marked as Deposition Exhibit 77B. Have**  
6 **you seen those e-mails before, that chain of**  
7 **e-mails?**  
8 A. Yeah, I don't have a specific  
9 recollection of this e-mail chain.  
10 **Q. The e-mail -- again, I am now starting**  
11 **at the top of the page rather than working**  
12 **chronologically. The e-mail from you to Monty**  
13 **Forrest, Alastair Blackwell, Neal Ullman, Jim**  
14 **Hrasca, copies Tonucci, Azerad and Flemming,**  
15 **entitled "1.9 billion, 9:15 p.m. update."**  
16 **And you say, and it's as follows,**  
17 **"Need a CUSIP level detail of the collateral and**  
18 **where it is for a 7 a.m. meeting with Bart.**  
19 **Monty, you or Alastair need to be at that 7 a.m.**  
20 **meeting to prepare for a final Weil meeting to**  
21 **finalize the agreement. Thanks. Good luck**  
22 **getting additional collateral. But good accurate**  
23 **presentation of the collateral is also critical,**  
24 **as we will append to the agreement. Thanks again**  
25 **for all the hard work. Ian."**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **funding?**  
3 A. They did.  
4 **Q. Would you explain to me how they do**  
5 **that? I'm a little, as you put it in your**  
6 **e-mails, lost in the numbers. How does Chase**  
7 **stand in to replace the Barclays repo funding?**  
8 A. The collateral is sitting in the Chase  
9 accounts, so they have the collateral, and they  
10 extend a box loan against that collateral.  
11 So the way the triparty would work  
12 normally is, if there is any collateral left in  
13 the box, because of inefficiencies in funding  
14 through the course of the day that weren't  
15 anticipated, in certain cases if there is extra  
16 collateral in the box, Chase would extend a loan  
17 against that collateral.  
18 So the collateral here that had been  
19 funded by Barclays in the 15.8 remained in the box  
20 as collateral, and Chase needed to fund it that  
21 night with a very substantial box loan.  
22 **Q. And they made the loan?**  
23 A. They did make the loan.  
24 **Q. And does that roll the next day?**  
25 A. Well, it remains in place and the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **Now, do you recall -- if you don't --**  
3 **even if you don't recall a particular e-mail, do**  
4 **you recall putting this project on the plate of**  
5 **people that night for a 7 a.m. meeting with Bart**  
6 **McDade?**  
7 A. I don't have a recollection of that.  
8 **Q. Do you recall meeting with Bart McDade**  
9 **on the Monday morning at 7 a.m.?**  
10 A. Is it on the --  
11 MR. BERNSTEIN: Yeah.  
12 **Q. Let me back up. The e-mail you send**  
13 **is --**  
14 A. This is Saturday night for Sunday  
15 morning.  
16 **Q. You're right. I have screwed up my**  
17 **GMTs here.**  
18 **So the e-mail is late Saturday night**  
19 **at about 10:23 p.m. Saturday night, and refers to**  
20 **a 7 a.m. meeting for Sunday, yeah?**  
21 A. I believe that to be the case based on  
22 the timing.  
23 **Q. OK. All right. And the reference in**  
24 **here to a final Weil meeting to finalize the**  
25 **agreement, what agreement are you referring to in**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **there?**  
3 A. Again, I know that the -- that there  
4 were meetings on Saturday and Sunday at Weil which  
5 were finalizing the agreement with Barclays, and  
6 that there were some set of issues or items that,  
7 you know, still needed to get resolved, and that's  
8 why, you know, we were meeting at the Weil offices  
9 on Sunday.  
10 **Q. Did you go to any of those meetings?**  
11 A. I mean I was at Weil. A lot of time  
12 was spent sitting around. There was some meetings  
13 that I was a part of, but the majority of meetings  
14 were happening with other people involved in  
15 those.  
16 **Q. And you were not at any of the**  
17 **meetings where the agreements were finalized; is**  
18 **that right?**  
19 A. That's -- I don't remember being at  
20 any meetings where things were finalized.  
21 **Q. And in this e-mail, you express to the**  
22 **men to whom you are sending it, "Good luck getting**  
23 **additional collateral." What is that a reference**  
24 **to? Are you still looking for collateral as late**  
25 **as Saturday night?**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **have marked as Deposition Exhibit 226. Have you**  
3 **seen that before?**  
4 A. I have no recollection of seeing this  
5 before.  
6 **Q. Do you know Gerard Larocca?**  
7 A. Gerard is the CAO for BarCap in the  
8 Americas.  
9 **Q. And this e-mail is dated September 21,**  
10 **2:15 p.m.**  
11 A. So that's the Saturday?  
12 **Q. Yes. No, that's the Sunday.**  
13 A. That's the Sunday.  
14 **Q. That's the Sunday.**  
15 Entitled "Please give me a call to  
16 review the schedules on collateral." And the text  
17 of the e-mail says, "To emphasize the key point,  
18 there is no overlap between the unencumbered  
19 collateral and the purchased assets of  
20 49.9 billion. Ian."  
21 **Do you see that?**  
22 A. I do.  
23 **Q. Do you have a recollection of there**  
24 **being some issue that you needed to resolve or**  
25 **clarify with Mr. Larocca as to whether the**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. I think we were trying to understand  
3 what was the collateral that was unencumbered.  
4 The information that was available was  
5 extremely -- it was extremely difficult to get  
6 clarity on what collateral we had that was really  
7 unencumbered, given that we didn't have access to  
8 many of our accounts at Chase and we didn't know  
9 what collateral Chase had actually taken.  
10 So I think that was what this was  
11 probably referring to. But I don't have a precise  
12 recollection of it. Based on what I know was  
13 going on at the time.  
14 **Q. Did that get straightened out, what**  
15 **collateral they had actually taken?**  
16 A. I think it was -- it wasn't  
17 straightened out completely that weekend. I think  
18 it remained work that was ongoing, and we didn't  
19 have access to many of the -- much of the  
20 information systems that we needed to resolve that  
21 completely.  
22 (Exhibit 226, e-mail dated September  
23 21, 2008 at 2:15 p.m. marked for  
24 identification, as of this date.)  
25 **Q. I put before you, Mr. Lowitt, what we**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 **unencumbered collateral overlapped with the repo**  
3 **amount?**  
4 A. I don't have a specific recollection,  
5 but I'm sure that BarCap would have wanted to make  
6 sure that the schedule that was the unencumbered  
7 collateral schedule didn't include any assets that  
8 were already in the repo transaction and that they  
9 were -- given the sort of uncertainty around  
10 information, that we were sure that the collateral  
11 that was in the unencumbered collateral schedule  
12 was not included in the repo transaction that we  
13 talked about before.  
14 **Q. And apparently you determined that the**  
15 **unencumbered collateral was not included in the**  
16 **repo; is that correct?**  
17 A. That was what a lot of the work that  
18 Alastair and the others who are referenced in that  
19 earlier e-mail were working to insure. Not only  
20 that it wasn't in the repo, but also that it was  
21 genuinely unencumbered and that if there was --  
22 you know, additional work over that period may  
23 have identified some collateral that we had  
24 previously thought was unencumbered that may have  
25 been encumbered as they got better or new

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 information.

3 **Q. When you write to Mr. Larocca on**  
4 **Sunday, the 21st, the conclusion that has been**  
5 **reached is it wasn't in the repo and it was**  
6 **unencumbered, correct?**

7 A. That was what the exercise was  
8 designed to ensure, and every effort was made to  
9 ensure that was the case. Whether it was correct  
10 in every case, can't say, but that was the best  
11 effort that a lot of people were putting in to  
12 determine that was the case, because that was our  
13 understanding of what the transaction called for.

14 **Q. I'm not trying to be argumentative**  
15 **here. I think we may be at cross purposes. I**  
16 **think what I am asking you is, this project people**  
17 **were working so hard on, did it conclude that the**  
18 **unencumbered -- that the unencumbered collateral**  
19 **was not included in the repo and it was available**  
20 **for transfer?**

21 MR. BERNSTEIN: Objection, asked and  
22 answered.

23 A. The exercise was to identify  
24 collateral that was unencumbered and not part of  
25 the repo transaction. The people working on it

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 to the 769 million of Treasuries so should be more  
3 comfortable to accomplish."

4 **Does that reflect an adjustment in the**  
5 **15c3 that no cash would move over?**

6 A. I don't know if it would be that no  
7 cash would move over. What I understood this to  
8 mean was the amount of excess under the 15c3 that  
9 was in the contract was 769 rather than that  
10 billion seven that had been talked about earlier.

11 **Q. What contract are you referring to?**

12 A. The final agreement that was signed by  
13 BarCap.

14 **Q. And you have never seen that contract?**

15 A. Which I didn't read.

16 **Q. Well, were you -- did you ever have it**  
17 **in your hand? Were you ever in possession of it?**

18 A. I did not have it in my hand that I  
19 recall.

20 **Q. And in your e-mail to Mr. Tonucci, at**  
21 **5:22 on the morning of September 22, you ask, "Is**  
22 **it all signed? Ian." Do you see that?**

23 A. Yes, I do.

24 **Q. What is the "it" that you are**  
25 **referring to?**

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2 were confident that that was the case.

3 What I can't say with certainty is  
4 that that was correct in every single  
5 circumstance, but that was the purpose of the  
6 exercise that people were undergoing.

7 **Q. OK, thank you.**

8 **(Exhibit 227, two-page document Bates**  
9 **numbered 70327 marked for identification, as**  
10 **of this date.)**

11 **Q. I put before you, Mr. Lowitt, what we**  
12 **have marked as Deposition Exhibit 227. Have you**  
13 **seen this set of e-mails before?**

14 A. Again, I don't recall the specific  
15 flow of e-mails.

16 **Q. Looking at the earliest e-mail in the**  
17 **chain, from Tonucci to you September 22,**  
18 **5:24 a.m., re: 15c3 -- you know, I think it's part**  
19 **of --**

20 A. Mine says 4:02 a.m.

21 **Q. I was in the wrong place. Let me**  
22 **start again.**

23 **The earliest is 4:02 a.m. entitled**  
24 **"15c3." Tonucci writes to O'Meara, Lowitt, Kelly,**  
25 **Azerad and Blackwell, "Final agreement was limited**

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2 A. I think I would have been referring to  
3 the agreement between Barclays and Lehman being  
4 finally signed and completed.

5 **Q. Again, just so we -- this series of**  
6 **questions is complete, that's the agreement you**  
7 **hadn't seen?**

8 A. It was the agreement that was being  
9 worked on by a large number of people between  
10 Barclays and Lehman. I wasn't involved with that.  
11 I wasn't present at the time that those agreements  
12 were being worked on.

13 **Q. Now, further up in the e-mail chain,**  
14 **you're told by Mr. Tonucci that there is an issue**  
15 **with RACERS which JPM had on their list of assets**  
16 **to transfer. That is the only open item. Do you**  
17 **see that?**

18 A. I do.

19 **Q. Do you have any recollection of what**  
20 **the issue was concerning RACERS?**

21 A. I don't have a specific recollection,  
22 but I can infer from this that JP Morgan wanted  
23 the RACERS to be included in the repo trade with  
24 Barclays and that Barclays was resisting that, and  
25 that was something that I was aware was an issue.

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you give me a bit more detail</p> <p>3 about the issues? Why was it Barclays was</p> <p>4 resisting that? Did you have an understanding of</p> <p>5 that?</p> <p>6 A. Well, it was one of those assets that</p> <p>7 Barclays didn't want to take, and when they</p> <p>8 thought about the Fed repo that they stepped into,</p> <p>9 the Fed repo didn't include the RACERS, and so</p> <p>10 they didn't feel that they should have to take the</p> <p>11 RACERS position as part of the repo.</p> <p>12 Q. Did they wind up taking the RACERS</p> <p>13 position, as far as you know?</p> <p>14 A. I don't know. That was, I'm sure,</p> <p>15 part of the discussion between JP Morgan and</p> <p>16 BarCap that you referenced that was completed in</p> <p>17 December.</p> <p>18 Q. Further up in the e-mail Mr. Tonucci</p> <p>19 says, "We are not involved, have tried to stay out</p> <p>20 of it completely." Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. What is your understanding of why</p> <p>23 Tonucci or Lehman would try to stay out of it</p> <p>24 completely?</p> <p>25 A. Look, I -- I don't know what Paolo</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 means by this specifically, but this would -- I</p> <p>3 think we would have seen this as an issue between</p> <p>4 JP Morgan and BarCap to resolve, not something</p> <p>5 that Lehman could contribute to.</p> <p>6 Could I take a quick break, please.</p> <p>7 Q. Sure. If it helps, I am almost done.</p> <p>8 If you want to take a break --</p> <p>9 A. Just a short one. I just need a few</p> <p>10 minutes.</p> <p>11 (Recess)</p> <p>12 BY MR. GAFFEY:</p> <p>13 Q. There was some part of your testimony</p> <p>14 that you wanted to clarify, sir?</p> <p>15 A. Yes.</p> <p>16 MR. BERNSTEIN: Let me refer you to</p> <p>17 the end of 176. You were asked, "What was</p> <p>18 the ultimate amount of 15c3 that went over?"</p> <p>19 And your answer: "Again, I know that in the</p> <p>20 final contract, the amount was about</p> <p>21 \$560 million."</p> <p>22 Do you want to make a clarification?</p> <p>23 A. The correct number would be</p> <p>24 \$760 million, around \$760 million.</p> <p>25 Q. Thanks.</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Mr. Lowitt, when the -- you will --</p> <p>3 can you pull out -- I think you have it there --</p> <p>4 Exhibit 19.</p> <p>5 A. Yes.</p> <p>6 Q. Everybody spends time with Exhibit 19.</p> <p>7 Exhibit 19. When the -- when that schedule was</p> <p>8 put together and the asset classes -- when that</p> <p>9 schedule was put together and it was going to</p> <p>10 reflect the price that Barclays would pay versus</p> <p>11 the amount shown on Lehman's books for those asset</p> <p>12 classes, were the RACERS included within the asset</p> <p>13 classes that are listed?</p> <p>14 A. I actually don't know. I don't know.</p> <p>15 Q. We talked a bit just before the last</p> <p>16 break about an issue that arose over the weekend</p> <p>17 where Barclays didn't want the RACERS and they</p> <p>18 were -- I think they were taken out of the</p> <p>19 collateral supporting the repo. Is that right?</p> <p>20 A. Again, I don't know what ended up</p> <p>21 being concluded between JP Morgan and Barclays,</p> <p>22 but I know that it was a point of contention</p> <p>23 between the two parties.</p> <p>24 Q. And whatever discussions they had to</p> <p>25 solve that point of contention, do you know if the</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 end result was the RACERS were not transferred</p> <p>3 over to Barclays?</p> <p>4 A. Again, I don't know the details of</p> <p>5 what the settlement was between JP Morgan and</p> <p>6 BarCap, so I don't know whether the RACERS went</p> <p>7 over to Barclays or remained with JP Morgan.</p> <p>8 Q. Do you know if the basis of Barclays'</p> <p>9 concern about the RACERS was the quality of that</p> <p>10 collateral?</p> <p>11 A. I don't know the basis of their</p> <p>12 concern. It may well have been their ability to</p> <p>13 feel comfortable with what they were willing to</p> <p>14 pay for it, but I don't know why, what the basis</p> <p>15 of their concern was.</p> <p>16 Q. We have talked from time to time today</p> <p>17 about the delta between the amount Barclays was</p> <p>18 willing to pay against the amount -- against the</p> <p>19 value that Lehman ascribed to the collateral. Was</p> <p>20 there any discussion over the weekend about</p> <p>21 adjusting that delta if the RACERS were taken out?</p> <p>22 A. Again, I'm not aware of any</p> <p>23 discussions around that. I think that the repo</p> <p>24 that Barclays believed that they were entering</p> <p>25 into was the one that they were standing in the</p>

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 shoes of the Fed. The RACERS were not part of the</p> <p>3 repo with the Fed, so they were not expecting the</p> <p>4 RACERS to be part of the transaction.</p> <p>5 Q. The constituent parts of the</p> <p>6 collateral that was in the repo at the Fed, the</p> <p>7 body of collateral that was with the Fed, was that</p> <p>8 body of collateral amongst the securities that</p> <p>9 were valued that led to the -- valued and priced,</p> <p>10 that led to the drafting of Exhibit 19?</p> <p>11 MR. HUME: Objection, vague and</p> <p>12 ambiguous.</p> <p>13 A. I think the --</p> <p>14 Q. You know, I think my friend Hamish</p> <p>15 might be right. Let me rephrase that.</p> <p>16 Did the component parts of Lehman's</p> <p>17 inventory change from the time the exercise that</p> <p>18 led to Exhibit 19 took place to the time</p> <p>19 collateral was put into the repo when Barclays</p> <p>20 stepped in for the Fed?</p> <p>21 A. I think there was some small amount of</p> <p>22 trading activity, but given the state of LBI, it</p> <p>23 would have been, you know, securities that were</p> <p>24 maturing or settling but there was very little</p> <p>25 trading activity. So it wouldn't be identical,</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 but it would be largely similar but not</p> <p>3 necessarily identical.</p> <p>4 Q. Now, with respect to this, on</p> <p>5 Exhibit 19, the annotations for assumed</p> <p>6 liabilities for comp and cure, did you ever have a</p> <p>7 discussion with Mr. Kelly about the amount that</p> <p>8 was accrued for cure in that schedule?</p> <p>9 A. You said the amount that was accrued</p> <p>10 for cure?</p> <p>11 Q. You see the amount next to "cure"</p> <p>12 there is 2 and a quarter billion?</p> <p>13 A. I do.</p> <p>14 Q. Did there come a time after that</p> <p>15 schedule was prepared where you had a discussion</p> <p>16 with Martin Kelly about whether that number was</p> <p>17 too high?</p> <p>18 A. Yeah, I have no recollection of</p> <p>19 discussions with Martin about a cure payment.</p> <p>20 Q. Do you have any recollections of any</p> <p>21 discussions with Mr. McDade where he was informed</p> <p>22 that that number was too high?</p> <p>23 A. I have -- I don't recall a</p> <p>24 conversation with Bart about that.</p> <p>25 Q. Do you generally recall any point</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 where Mr. McDade allowed as how if that number was</p> <p>3 too high, Lehman had just left a billion dollars</p> <p>4 on the table?</p> <p>5 A. I don't recall any conversations</p> <p>6 around the cure payment after the Monday night,</p> <p>7 Tuesday morning.</p> <p>8 Q. Do you recall any conversations at</p> <p>9 all, without, you know, with regard to Mr. McDade,</p> <p>10 Mr. Kelly, any conversations at all about whether</p> <p>11 that accrual for 2 and a quarter billion for cure</p> <p>12 was a good estimate, whether it was close to what</p> <p>13 the real liability would be?</p> <p>14 A. Again, my focus through the course of</p> <p>15 that week was around funding, around other</p> <p>16 aspects, and I don't recall any discussions around</p> <p>17 the cure payment.</p> <p>18 Q. Were you involved in any discussions</p> <p>19 surrounding the comp accrual shown on that</p> <p>20 schedule?</p> <p>21 A. I don't recall being a part of any</p> <p>22 discussions around the comp.</p> <p>23 Q. Did you ever develop an understanding</p> <p>24 as to whether the accrual for comp on that</p> <p>25 schedule bore any relation to the actual accruals</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 for comp at Lehman?</p> <p>3 MR. BERNSTEIN: Objection,</p> <p>4 mischaracterizes the document.</p> <p>5 Q. I am sorry, I am getting tired too.</p> <p>6 Let me rephrase the question.</p> <p>7 Did you ever develop an understanding</p> <p>8 as to whether a \$2 billion accrual for comp was a</p> <p>9 good estimate?</p> <p>10 A. My understanding of the 2 billion was</p> <p>11 that it was a negotiated number between Barclays</p> <p>12 and Lehman, that it included the cash bonus, as</p> <p>13 well as sort of stock and other forms of</p> <p>14 compensation.</p> <p>15 So the fact that it was a \$2 billion</p> <p>16 number which was larger than the sort of accrual</p> <p>17 for cash bonus didn't surprise me.</p> <p>18 Q. Is the effect of that enlargement of</p> <p>19 the number over the accrual for -- accrual for a</p> <p>20 cash bonus, to increase the consideration Barclays</p> <p>21 is shown to pay by assuming liabilities?</p> <p>22 A. I don't see it in that way. I see it</p> <p>23 as an agreement that \$2 billion of compensation in</p> <p>24 the form of cash bonus and stock would be</p> <p>25 available for Lehman employees.</p>

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. Was it agreed to that amount,</p> <p>3 \$2 billion, simply so assets and liabilities would</p> <p>4 balance on Exhibit 19?</p> <p>5 A. The comp number at 2 billion was</p> <p>6 consistent through earlier iterations of this that</p> <p>7 we have been through, so it wasn't a number that</p> <p>8 made these balance. It was one of the inputs that</p> <p>9 had been consistent based on the discussions</p> <p>10 through the evening and morning.</p> <p>11 Q. Were the -- were the numbers for comp</p> <p>12 and accrual on that balance -- on that, on Exhibit</p> <p>13 19, just plug numbers?</p> <p>14 A. No. The comp number was the number</p> <p>15 that was the number that was agreed between the</p> <p>16 parties, and 2 and a quarter was the estimate that</p> <p>17 Martin generated on that evening for what the cure</p> <p>18 payment items were going to be.</p> <p>19 Q. It was Martin who generated that</p> <p>20 number?</p> <p>21 A. That's my recollection.</p> <p>22 Q. Tell me what you remember about Martin</p> <p>23 generating that number. Martin is Martin Kelly?</p> <p>24 A. Martin Kelly.</p> <p>25 My own specific recollection was</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 talking with Martin on that -- either the Monday</p> <p>3 night or Tuesday morning about the need to</p> <p>4 estimate that and the difficulties associated with</p> <p>5 it, given that we didn't have sort of daily</p> <p>6 balance sheets associated with LBI, and there was</p> <p>7 a need to estimate it, and Martin went through</p> <p>8 some process to estimate it, which I don't recall</p> <p>9 him taking me through. He would just have</p> <p>10 provided the estimate.</p> <p>11 Q. I am showing you, sir, what has</p> <p>12 previously been marked as Exhibit 45. Have you</p> <p>13 seen this document before?</p> <p>14 A. I have not.</p> <p>15 Q. Do you recall writing to</p> <p>16 Mr. Berkenfeld, Mr. McDade, Mr. Kirk, Mr. Tonucci</p> <p>17 and Mr. Seery in the early morning hours of</p> <p>18 Monday, September 22, and commenting on the fact</p> <p>19 that the closing had started?</p> <p>20 A. I don't recall it specifically.</p> <p>21 Q. Do you recall sending e-mails back and</p> <p>22 forth inquiring as to where things stood on the</p> <p>23 closing?</p> <p>24 A. I mean we have been through</p> <p>25 Exhibit 227, where I was asking Paolo how the</p>
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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 negotiations were proceeding. I obviously was</p> <p>3 interested in how it was going.</p> <p>4 Q. And in the e-mail below yours saying</p> <p>5 hooray, from Berkenfeld to McDade, Berkenfeld</p> <p>6 writes, "JP Morgan blinked. They agreed to cancel</p> <p>7 the 7.4 billion collateral purchase."</p> <p>8 Do you understand what that is a</p> <p>9 reference to?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if at the time you did</p> <p>12 have an understanding, even if you don't remember</p> <p>13 it today?</p> <p>14 A. I don't have any recollection other</p> <p>15 than I am sure that my hooray with three</p> <p>16 exclamation points was about we are starting the</p> <p>17 closing. That was a huge relief, that after all</p> <p>18 this, the transaction was going to close.</p> <p>19 Q. I am going to ask you not to say</p> <p>20 hooray, but I don't have any further questions.</p> <p>21 Let's just change some seats so the court reporter</p> <p>22 can hear.</p> <p>23 ----</p> <p>24</p> <p>25</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 EXAMINATION BY</p> <p>3 MS. TAGGART:</p> <p>4 Q. Mr. Lowitt, I am Erica Taggart and I</p> <p>5 represent the committee.</p> <p>6 A. The committee?</p> <p>7 Q. The official committee of unsecured</p> <p>8 creditors. We are special counsel for the</p> <p>9 committee and we're the law firm of Quinn Emanuel.</p> <p>10 A. So the creditors' committee?</p> <p>11 Q. Yes.</p> <p>12 Before the closing did you have any</p> <p>13 other outstanding offers of employment if you did</p> <p>14 not move to Barclays?</p> <p>15 A. I didn't have outstanding offers, but</p> <p>16 I had been in conversations with various other</p> <p>17 institutions.</p> <p>18 Q. Do you remember now what those</p> <p>19 institutions were?</p> <p>20 A. I had some conversations with Citadel.</p> <p>21 Q. And any others?</p> <p>22 A. That was -- that's one that I had</p> <p>23 probably the most conversations with.</p> <p>24 Q. Did you get to the point of discussing</p> <p>25 any terms of employment with Citadel prior to the</p>

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2 closing?

3 A. I did not.

4 **Q. Do you know one way or the other**  
5 **whether Citadel was prepared to offer you any**  
6 **terms that were commensurate with what Barclays**  
7 **was offering you?**

8 MR. BERNSTEIN: Objection, vague and  
9 ambiguous.

10 A. The role that I was in discussions  
11 with Citadel was a very senior role at a major  
12 hedge fund, but we did not discuss terms  
13 specifically. It didn't get to that point.

14 **Q. Now, I want to switch gears for a**  
15 **minute and talk about the repo transaction, and I**  
16 **understand that the general idea was that Barclays**  
17 **was going to step into the shoes of the Fed and**  
18 **take the collateral that had been pledged to the**  
19 **Fed as part of a repurchase agreement.**

20 **Do you generally recall that subject?**

21 A. I do.

22 **Q. Was all of the collateral that was**  
23 **pledged to the Fed as part of the repurchase**  
24 **agreement ultimately given to Barclays?**

25 A. Again, I don't know whether some of

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2 that collateral was held by Chase or whether all  
3 of that collateral was moved to Barclays. That  
4 was subject to that settlement that we referred to  
5 earlier as occurring in the December time frame  
6 between JP Morgan and Barclays.

7 **Q. Is it your understanding that some of**  
8 **the collateral that was pledged to the Fed did not**  
9 **make it over to Barclays?**

10 A. Again, I don't know with certainty  
11 whether all the collateral that was in the Fed  
12 repo made it over to Barclays. I believe the  
13 majority did. I can't say whether all did because  
14 I don't have the details of the settlement between  
15 JP Morgan and Barclays.

16 **Q. Do you know if there was collateral**  
17 **that went to Barclays as part of the triparty repo**  
18 **with Bank of New York, Barclays and Lehman that**  
19 **was not part of what was pledged to the Fed?**

20 A. Again, I don't know all the collateral  
21 that made it into BoNY because of the operational  
22 difficulties with Chase and Chase's activity  
23 moving collateral from Chase to BoNY.

24 **Q. Do you know who would know that?**

25 A. Well, the people who would have the

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2 best view of that would probably be Paolo Tonucci  
3 and Mr. Blackwell.

4 **Q. Do you know whether it was someone at**  
5 **JPMC or someone at Lehman who made the decision**  
6 **about what of the securities that were pledged to**  
7 **the Fed were going to be transferred to Barclays?**

8 A. I don't know with certainty. I would  
9 imagine that it was -- there were communications  
10 going on between Lehman operations and people at  
11 Chase to effect the movement of collateral from  
12 Chase to BoNY.

13 **Q. Were you involved at all in**  
14 **discussions of whether residential mortgage-backed**  
15 **securities would be part of the transaction**  
16 **between Lehman and Barclays?**

17 A. I wasn't part of the negotiations or  
18 the determination of which assets would be  
19 included. I am assuming you are referring to now  
20 the sort of earlier transaction that was discussed  
21 on the Monday and Tuesday.

22 **Q. Well, do you know one way or another**  
23 **whether -- have you heard the term "Resi's" in**  
24 **connection with this transaction?**

25 A. There may well have been Resi's that

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2 were part of the transaction, I can't say for  
3 certainty whether they were or they weren't.

4 **Q. So just to be clear, do you know one**  
5 **way or the other whether any residential**  
6 **mortgage-backed securities were transferred to**  
7 **Barclays as part of the transaction with Lehman?**

8 A. I don't know with certainty.

9 **Q. You also discussed earlier that there**  
10 **was a presentation to the creditors committee the**  
11 **weekend prior to the closing that showed a**  
12 **schedule of unencumbered collateral. Do you**  
13 **recall that?**

14 A. I don't think it was a presentation,  
15 but I do recall that a schedule of unencumbered  
16 collateral that was going to be included as a  
17 component of the deal was shared with the  
18 creditors committee.

19 **Q. How do you know that?**

20 A. I was at the Weil offices and the  
21 creditors were in a -- the creditors committee  
22 were in one of the rooms at the Weil offices.

23 **Q. Were you present during that**  
24 **presentation to the committee?**

25 A. Again, it wasn't a presentation. I



<p style="text-align: right;">Page 222</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 think it was a delivery of a schedule.</p> <p>3 Q. Were you present when there was a</p> <p>4 delivery of a schedule?</p> <p>5 A. I don't have a precise recollection of</p> <p>6 that.</p> <p>7 Q. Do you know who did the delivery?</p> <p>8 A. I don't know precisely. I would --</p> <p>9 again, I'm speculating, but I think it would have</p> <p>10 been either Paolo Tonucci or Robert Azerad.</p> <p>11 Q. Do you know if any other documents</p> <p>12 were transmitted to the committee along with that</p> <p>13 schedule identifying unencumbered collateral?</p> <p>14 A. I don't know whether they received</p> <p>15 additional information. They may well have, I</p> <p>16 don't know.</p> <p>17 Q. Do you know one way or the other</p> <p>18 whether there was any discussion of the value of</p> <p>19 that unencumbered collateral in the delivery of</p> <p>20 that schedule to the committee?</p> <p>21 A. Again, I think that the schedule was</p> <p>22 delivered to the committee. I'm not aware of</p> <p>23 specific discussions in relation to the valuation.</p> <p>24 Q. You also testified this morning about</p> <p>25 your understanding of the deal as it closed and</p>	<p style="text-align: right;">Page 223</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 you described your sense of many of the elements</p> <p>3 of the transaction. Do you recall that part of</p> <p>4 your testimony?</p> <p>5 A. I do recall that.</p> <p>6 Q. And I think you listed some different</p> <p>7 pieces of the transaction of value that was</p> <p>8 ultimately received by Barclays generally?</p> <p>9 A. My recollection is that I talked about</p> <p>10 different elements of the transaction.</p> <p>11 Q. Do you have a sense of what Barclays</p> <p>12 gave in the deal to Lehman?</p> <p>13 A. I am sorry, can you be more specific</p> <p>14 about what you mean by what Barclays gave to</p> <p>15 Lehman.</p> <p>16 Q. Sure. So if I understand your</p> <p>17 testimony from earlier, you listed some different</p> <p>18 things that Lehman ended up transferring to</p> <p>19 Barclays in the transaction, including</p> <p>20 unencumbered collateral and the 15c3 and some</p> <p>21 securities that were related to the repo. Do you</p> <p>22 recall that?</p> <p>23 A. I do.</p> <p>24 Q. What did Lehman receive from the</p> <p>25 transaction?</p>
<p style="text-align: right;">Page 224</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 A. Again, what Lehman received was</p> <p>3 negotiated by other parties and I don't know the</p> <p>4 details of all of those items. I know they got</p> <p>5 consideration for the building. I know they</p> <p>6 received some amount of cash and I know there was</p> <p>7 a TSA agreement that was signed which required</p> <p>8 Barclays to provide a number of services to</p> <p>9 support the various estates. And there may be</p> <p>10 others, I'm not familiar with all of them, all</p> <p>11 other items.</p> <p>12 Q. And in connection with the repurchase</p> <p>13 agreement, they received 45 billion dollars in</p> <p>14 cash?</p> <p>15 A. Essentially, they received, you know,</p> <p>16 45 billion dollars of cash which then had to be</p> <p>17 paid to the Fed to replace the repo that was done</p> <p>18 by the Fed.</p> <p>19 Q. For the securities that Barclays</p> <p>20 received as part of this repurchase agreement, did</p> <p>21 it assume any liabilities related to those</p> <p>22 securities?</p> <p>23 MR. BERNSTEIN: Objection, calls for a</p> <p>24 legal conclusion.</p> <p>25 A. I'm afraid I don't understand what you</p>	<p style="text-align: right;">Page 225</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 mean by accepted liabilities.</p> <p>3 Q. Well, maybe we could take a look at</p> <p>4 Exhibit 19 and that's the schedule -- this is the</p> <p>5 version that was marked final.</p> <p>6 A. Everyone's favorite schedule.</p> <p>7 Q. It is everyone's favorite schedule.</p> <p>8 So putting aside the questions I just</p> <p>9 asked, focusing on this schedule, did you have</p> <p>10 an understanding of what was listed under the</p> <p>11 liability section?</p> <p>12 A. Yeah, but the repo that we have just</p> <p>13 been talking about was what was transacted on the</p> <p>14 Thursday and it replaced this transaction.</p> <p>15 Q. I understand and it is my fault that I</p> <p>16 switched two gears, but I just for a minute want</p> <p>17 to now focus on this schedule and the way it</p> <p>18 reflected the deal that was in place as of</p> <p>19 September 16 at 11:18 a.m. Did you have an</p> <p>20 understanding of what these numbers listed under</p> <p>21 liabilities were meant to reflect?</p> <p>22 A. I think these were liabilities that</p> <p>23 Barclays would take on, whether those were the</p> <p>24 short positions that LBI held or they would have</p> <p>25 to step in for -- they would have to assume the</p>

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2 liability of some of the short term funding.

3 Q. Was there a relationship between the  
4 categories of assets that were listed, such as  
5 government and agriculture, with assets and the  
6 liabilities that were listed under that same  
7 category in the other column?

8 A. Those are agencies, so it is  
9 government and agencies.

10 Q. Excuse me?

11 A. That's OK. Those would have been  
12 short positions in governments and agencies is 21  
13 billion, and the 40 would have been the long  
14 positions in governments and agencies.

15 Q. Do you know how the numbers were  
16 arrived at that were listed in the liabilities on  
17 this schedule?

18 A. Again, they were the collection of a  
19 number of people in finance identifying what were  
20 the short positions that were associated with  
21 those assets that were going to be acquired by  
22 Barclays.

23 Q. Were the numbers listed in the  
24 liabilities on Exhibit 19 subject to negotiation  
25 between Barclays and Lehman?

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2 A. No, I don't think I said that.

3 Q. Was there any -- was there any effort  
4 made to match assets and liabilities?

5 MR. BERNSTEIN: Objection, vague and  
6 ambiguous, but you may answer.

7 A. I mean the, you know, adjusted total  
8 assets and the total of liabilities do match, so  
9 one would assume from that that there was some  
10 effort to match assets and liabilities in this  
11 schedule. Whether this schedule represents the  
12 agreement that was agreed to by Barclays again is  
13 subject to the negotiators and what the  
14 negotiators agreed to.

15 Q. First let me find out if I can  
16 understand what I think you testified to before.  
17 I think it was in just -- according to my notes,  
18 when you were talking about what you were doing  
19 that night, you collected input from parties about  
20 the asset part of the transaction, you got input  
21 from the business about which assets Barclays  
22 would be interested in, and I believe you made  
23 some sort of testimony about there was an effort  
24 to match assets and liabilities. I understand  
25 that is paraphrasing and not exactly what you

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2 A. Again, I wasn't party to those  
3 discussions so I can't answer that question for  
4 you. I am sorry.

5 Q. Do you know one way or another whether  
6 they reflected Lehman's view of what the  
7 liabilities would be or an opinion based on what  
8 Barclays thought the liabilities would be?

9 A. I can't say with certainty. I think  
10 these were probably the liabilities as Lehman  
11 assessed them with input from folks at BarCap to  
12 the extent that they were uncomfortable accepting  
13 some of the short positions.

14 Q. Do you know if in the ultimate  
15 agreement, setting this aside, Barclays assumed  
16 any liabilities related to short positions?

17 A. Again, I don't know. As discussed,  
18 you know, I wasn't party to the negotiations.

19 Q. I think you also testified earlier  
20 that you were involved in a -- there was some  
21 effort made to match assets and liabilities I  
22 think in conjunction with setting up the initial  
23 deal on Tuesday the 16th.

24 MR. HUME: Objection, mischaracterizes  
25 prior testimony.

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2 said, but do you recall any involvement that you  
3 personally did in an effort to match assets and  
4 liabilities?

5 MR. BERNSTEIN: I am going to object  
6 to the form of the question.

7 You can answer the last sentence which  
8 was the question part.

9 A. Again, I think that the adjusted total  
10 assets equals the total liabilities on this, so  
11 some effort was undertaken to match assets and  
12 liabilities per the schedule.

13 Q. Were you personally involved in some  
14 activity relating to matching assets and  
15 liabilities?

16 A. Again, I have no precise recollection,  
17 but I may well have been involved in that.

18 Q. But like you testified, you did notice  
19 that the final exhibit does have a matching in  
20 that the adjusted total assets is the same number  
21 as the total liabilities? You see that?

22 A. I do see that.

23 Q. And do you know if that was  
24 coincidence or that was something that was  
25 purposeful?

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 MR. HUME: Objection, vague and  
3 ambiguous.  
4 A. Yeah, I can't say -- I can't say  
5 anything to you other than the totals do equal one  
6 another.  
7 Q. If I look, Exhibit 200, which is I  
8 believe the earlier -- an earlier version of the  
9 schedule that has some annotations by yourself,  
10 and here you see there are some -- the numbers  
11 that are listed under adjusted total assets is not  
12 the same as total liabilities. You see that?  
13 A. I do see that.  
14 Q. Do you know when -- did there come a  
15 time that you noticed that the schedule had those  
16 matching of assets and liabilities?  
17 A. Again, I don't have a specific --  
18 this -- I don't have a specific recollection of  
19 that. I do know that through the course of the  
20 evening and the morning, these were updated with  
21 additional information, and as you point out, the  
22 Exhibit 19 does have assets and liabilities equal  
23 to one another.  
24 Q. Switching topics again, I also want to  
25 take you to the conversation that you had with

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. I mean, it is not based on specific  
3 knowledge of what they were thinking about. It is  
4 based on my sense of what would happen in a -- in  
5 any circumstance where a securities firm was  
6 selling a very large block of assets.  
7 They would expect that whoever was  
8 purchasing that large block of assets,  
9 particularly at a time of great market  
10 uncertainty -- which certainly the week after  
11 the Lehman bankruptcy was a time of great  
12 market uncertainty -- that they would pay less  
13 for those assets because they were making such  
14 a large purchase and how much less they would  
15 pay would also be determined by the amount of  
16 volatility in the marketplace and how given  
17 that volatility, the asset prices could reduce  
18 before they were able to sell out their  
19 positions.  
20 Q. Did you communicate with anyone at  
21 Barclays about whether the reason for their  
22 selection of price had to do with either the size  
23 of their purchase or the volatility of the market?  
24 A. I don't recall specific conversation  
25 with people at Barclays about their approach to

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 Mr. McDade and Mr. Ricci on Friday the 19th about  
3 the process of finding additional value. Do you  
4 remember that event?  
5 A. I do.  
6 Q. Was there any time given where you  
7 needed to find that amount of collateral by a  
8 certain time?  
9 A. I don't recall a specific deadline for  
10 that.  
11 Q. Did you have a sense for when that  
12 would be needed by?  
13 A. I think my sense was the sooner, the  
14 better.  
15 Q. You also testified a number of times  
16 about -- that the numbers -- let's start with, for  
17 example, listed on the assets in Exhibit 19  
18 reflected a price that Barclays was willing to pay  
19 given the size of their purchase and the  
20 volatility of the market. Do you recall that?  
21 A. I do.  
22 Q. What is your basis of your testimony  
23 that that price was determined based on the  
24 factors of the size of their purchase and the  
25 volatility of the market?

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 the valuation of the assets.  
3 Q. What about anyone at Lehman? Did  
4 anybody at Lehman say that the price that Barclays  
5 was going to pay was based on the size of their  
6 purchase and the volatility of the market?  
7 A. Again, I don't have a precise  
8 recollection of that. But again, I don't feel  
9 that that would have been an unusual view for  
10 anyone to have had. If I had spoken with Bart or  
11 Alex Kirk about that, I'm sure, I believe they  
12 would have agreed that that made sense. But I  
13 don't recall a specific conversation.  
14 Q. Putting aside conversations with your  
15 lawyers and this discussion today, have you ever  
16 spoken to anybody about whether or not the price  
17 that Barclays paid was reflective of the size of  
18 their purchase and the volatility of the market?  
19 MR. BERNSTEIN: Hold on. When you  
20 said putting aside conversations with your  
21 lawyers, you are including Barclays counsel?  
22 MS. TAGGART: Yes.  
23 MR. BERNSTEIN: OK, go ahead.  
24 A. The transaction that actually took  
25 place was not this transaction. It was the repo

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2 transaction and the repo transaction, the  
3 difference between the collateral delivered and  
4 the cash received was driven by the standard  
5 financing haircuts and so the actual transaction  
6 that took place was different and there was no  
7 requirement to hence operationalize this version  
8 of adjusted assets being sold to Barclays.

9 Q. I understand there is something that  
10 happens after about the repo transaction, but I do  
11 just want to focus on your testimony today, a  
12 number of times, that the pricing that was, at  
13 least in the original transaction from the 16th,  
14 was based on the size of the purchase and the  
15 volatility of the market. Putting aside your  
16 conversations with counsel, have you ever  
17 discussed that with anybody?

18 A. I don't have a recollection of  
19 discussing that specifically with anybody, but  
20 again, I would just reiterate that the notion of  
21 one firm buying a large block of assets from  
22 another would involve a substantial bid offer  
23 spread is one that would be broadly understood by  
24 market participants.

25 Q. What exactly were you told about the

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2 reason that these prices were less than what was  
3 marked on Lehman's books referring to the prices  
4 reflected on Exhibit 19?

5 A. Again, I don't have a recollection of  
6 a specific instruction with regard to that. I was  
7 aware that Barclays were willing to purchase a  
8 substantial quantity of assets from the Lehman  
9 estate and that what they were willing to pay for  
10 those assets was less than what those were marked  
11 at based on the prevailing market prices.

12 Q. Is there anything else that you  
13 actually learned from somebody, either from  
14 Barclays or Lehman, prior to September 22, about  
15 the basis for the pricing that Barclays used in  
16 the assets that it was willing to pay for these  
17 assets?

18 A. Again, I don't have anything specific  
19 with regard to why Barclays were willing to pay  
20 those prices for these specific assets. That was  
21 their judgment of what they were willing to pay to  
22 acquire this large quantity of assets.

23 Q. You did testify just a bit ago that  
24 you believed that some sort of discount based on  
25 the size of the purchase or volatility of the

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2 market is something that happens when securities  
3 firms are selling a large block of assets. Do you  
4 recall that?

5 A. I do.

6 Q. Have you been in any transactions  
7 where securities firms are selling large blocks of  
8 asset?

9 A. Well, in the, you know, in the prior  
10 quarter, Lehman had sold substantial quantities of  
11 assets in our efforts to manage down our legacy  
12 positions. But I wasn't party to those specific  
13 negotiations, but I was aware that when  
14 counterparties were looking to purchase blocks of  
15 assets, they were looking for a big bid/offer  
16 spread associated with that.

17 MR. BERNSTEIN: Again, this may just  
18 be the transcript, but what's written down  
19 "big bid/offer spread."

20 THE WITNESS: A big bid/offer spread.

21 MR. BERNSTEIN: Good, my apologies.

22 Q. Are you referring to specific  
23 transactions?

24 A. The transaction that I have in mind is  
25 a sale of European residential securities to

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 BlackRock.

3 Q. Were you involved in those  
4 negotiations?

5 A. I was not.

6 Q. How do you know that BlackRock wanted  
7 a bid off the spread in association with the  
8 transaction?

9 A. That would have been reported to me by  
10 Tom Humphrey who was engaged in discussions with  
11 BlackRock.

12 Q. Do you know what BlackRock was  
13 intending to do with the assets that it purchased?

14 A. No, I don't.

15 Q. And do you know what the amount of  
16 spread it negotiated for, BlackRock negotiated in  
17 this other transaction?

18 A. I don't recall precisely what the  
19 spread was. It actually wasn't a consummated  
20 transaction. It was one that was in negotiations  
21 over the quarter end and didn't end up being  
22 completed.

23 Q. Is there any other transaction that is  
24 informing your testimony that you believe that  
25 generally when securities firms are selling large

<p style="text-align: right;">Page 238</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>blocks of assets, they require some sort of</b></p> <p>3 <b>discount?</b></p> <p>4       A. Again, I can't point to specific</p> <p>5 transactions, but it was my understanding that --</p> <p>6 it is my understanding that that's how the market</p> <p>7 operates. And it does seem logical to me.</p> <p>8       <b>Q. Do you have any other factual basis</b></p> <p>9 <b>besides your belief that that is logical?</b></p> <p>10      A. I can't point to a specific</p> <p>11 transaction which effects that. I could --</p> <p>12       <b>Q. Anything else?</b></p> <p>13      A. No.</p> <p>14       <b>Q. But your general belief based on logic</b></p> <p>15 <b>that securities firms selling a large block of</b></p> <p>16 <b>assets include this sort of discount -- how is</b></p> <p>17 <b>your sense of how much that discount is compared</b></p> <p>18 <b>to the haircut that financiers (sic) often require</b></p> <p>19 <b>when they are giving cash for collateral?</b></p> <p>20      MR. BERNSTEIN: Objection, vague and</p> <p>21 ambiguous.</p> <p>22      A. I think those are just different</p> <p>23 things. One is negotiated by two parties, one of</p> <p>24 whom wants to sell assets in size quickly where</p> <p>25 the buyer has negotiating power and can extract a</p>	<p style="text-align: right;">Page 239</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 large bid/offer spread to transact. You know,</p> <p>3 financing haircuts are set based on sort of a</p> <p>4 market standard which establishes what the market</p> <p>5 believes they have to take possession of the</p> <p>6 collateral and sell off the collateral to generate</p> <p>7 cash, they will have to sell the collateral out at</p> <p>8 in order to realize the cash value that they have</p> <p>9 extended.</p> <p>10       Can I take a short break?</p> <p>11       <b>Q. Sure.</b></p> <p>12       <b>(Recess)</b></p> <p>13       <b>Q. So I also want to ask you some</b></p> <p>14 <b>questions about the search for unencumbered</b></p> <p>15 <b>assets. As I understand that, there was a long</b></p> <p>16 <b>process of trying to find what unencumbered assets</b></p> <p>17 <b>Lehman had that could be transferred to Barclays,</b></p> <p>18 <b>do you recall that?</b></p> <p>19      A. I do.</p> <p>20       <b>Q. Of all the unencumbered assets that</b></p> <p>21 <b>Lehman located, did it give all of those to</b></p> <p>22 <b>Barclays?</b></p> <p>23      A. I don't know the details of the</p> <p>24 transaction that was agreed between the parties.</p> <p>25       <b>Q. Are you aware of any unencumbered</b></p>
<p style="text-align: right;">Page 240</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 <b>assets that were held back from Barclays?</b></p> <p>3      A. Again, I think there was a schedule</p> <p>4 that was created that represented our best</p> <p>5 estimate of what the unencumbered collateral was</p> <p>6 and that was the schedule that was provided to the</p> <p>7 Lehman management and they then negotiated a deal</p> <p>8 with Barclays.</p> <p>9       <b>Q. But as far as you know, there was no</b></p> <p>10 <b>unencumbered assets that you found in your search</b></p> <p>11 <b>that were held back from the transfer to Barclays,</b></p> <p>12 <b>is that correct?</b></p> <p>13      MR. BERNSTEIN: Objection, no</p> <p>14 foundation. But go ahead.</p> <p>15      A. Again, we came up with what we thought</p> <p>16 was the unencumbered collateral. We realize that</p> <p>17 had we had imperfect information and it may have</p> <p>18 been that there was additional collateral. It may</p> <p>19 have been that some of the collateral on the</p> <p>20 schedule was, in fact, encumbered and we were</p> <p>21 unaware of that. So it was a best efforts to come</p> <p>22 up with a schedule that reflected collateral that</p> <p>23 was not a part of the repo, as well as was</p> <p>24 unencumbered and available to be transferred to</p> <p>25 Barclays if that was what was agreed between the</p>	<p style="text-align: right;">Page 241</p> <p>1           <b>LOWITT - HIGHLY CONFIDENTIAL</b></p> <p>2 parties.</p> <p>3       <b>Q. I just want to focus on what you know.</b></p> <p>4 <b>You were part of a search where you searched for</b></p> <p>5 <b>any collateral that was unencumbered that could be</b></p> <p>6 <b>transferred to Barclays. You were part of that</b></p> <p>7 <b>search effort, right?</b></p> <p>8      A. That's correct.</p> <p>9       <b>Q. And all of the unencumbered assets</b></p> <p>10 <b>that you were able to locate that could be</b></p> <p>11 <b>transferred, you communicated that to people at</b></p> <p>12 <b>Lehman as assets that could be transferred to</b></p> <p>13 <b>Barclays, right?</b></p> <p>14      A. Yeah, that schedule was made available</p> <p>15 to people, that schedule was made available.</p> <p>16       <b>Q. And do you personally know of any of</b></p> <p>17 <b>those assets that you found that were held back</b></p> <p>18 <b>from the transfer?</b></p> <p>19      A. Again, we had a schedule of assets</p> <p>20 that we believed was, were unencumbered and those</p> <p>21 assets were identified and included on a schedule</p> <p>22 and it summed around a billion, nine of value.</p> <p>23       <b>Q. You personally don't know of any</b></p> <p>24 <b>assets that were determined to be unencumbered</b></p> <p>25 <b>that were held back from the agreement with</b></p>

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2 **Barclays, correct?**

3 A. I'm not aware at this point of any  
4 collateral that was not included in that schedule  
5 that we have talked about.

6 **Q. And that schedule refers to the**  
7 **schedule of unencumbered assets that -- well,**  
8 **maybe I should ask, what schedule are you**  
9 **referring to when you say that all of the**  
10 **unencumbered assets were included on the schedule?**

11 A. That we were aware of at that time  
12 were included in the schedule of unencumbered  
13 assets, I don't know if it is schedule B that I  
14 think we have been referring to.

15 **Q. So is it your understanding that all**  
16 **of the assets that you determined were**  
17 **unencumbered and could be transferred were**  
18 **included on a schedule that became schedule B to a**  
19 **contract with Barclays?**

20 A. Again, I don't know that it became  
21 part of the contract, but yes, all the assets that  
22 we identified -- but again, I'll come back to make  
23 sure there was no confusion, there may well have  
24 been unencumbered collateral that we had not  
25 identified and determined that it specifically was

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2 been collateral that actually was unencumbered but  
3 we were unable to determine it, and as a result,  
4 we would not have included it in that schedule.

5 The "we" I am talking about here is  
6 very loose. I wasn't actually involved in  
7 searching for pieces of collateral. I am  
8 merely referring to the broad effort that was  
9 going on involving operations and finance.

10 **Q. The broad effort that involved**  
11 **operations and finance looked everywhere that it**  
12 **thought there might be unencumbered collateral and**  
13 **every collateral that it could determine really**  
14 **was unencumbered, you put on schedule B, right?**

15 MR. BERNSTEIN: Two objections; no  
16 foundation, asked and answered. This really  
17 ought to be the last time.

18 A. Again, I -- I have just got to  
19 reiterate what I think I have said in the previous  
20 answers which is we looked broadly for all sources  
21 of unencumbered collateral. When we -- when  
22 people in operations and finance were able to  
23 determine to the best of their judgment that it  
24 was unencumbered, then it made it on to the  
25 schedule. There was an understanding that there

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2 unencumbered and we knew that there may well have  
3 been additional collateral that we were not able  
4 to determine at that point was unencumbered but  
5 there may have been. But what we had identified  
6 to the point that you have been pressing on was  
7 included in that schedule.

8 **Q. When you were searching for**  
9 **unencumbered collateral, did you search everywhere**  
10 **you thought that unencumbered collateral might be?**

11 A. Well, I think the search was broad,  
12 but I mean in particular, there was -- there is  
13 collateral in physical form that we were unsure  
14 whether it was unencumbered or whether it had been  
15 seized by one of the entities, so that in  
16 particular was collateral that we just did not  
17 know if it was unencumbered or not.

18 **Q. But in your search that you did prior**  
19 **to the closing, you searched for everywhere that**  
20 **there might be collateral that would be**  
21 **unencumbered that could be transferred to**  
22 **Barclays, right?**

23 A. Again, I keep saying the same thing  
24 which is we looked to determine what collateral we  
25 could determine was unencumbered. There may have

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2 was some collateral which, upon additional work,  
3 might have been determined to be unencumbered and  
4 people knew and recognized that.

5 **Q. While you have been at Barclays, have**  
6 **you been involved at all in valuing the gain that**  
7 **Barclays had upon acquisition, the gain of what it**  
8 **received from Lehman?**

9 A. I've not been involved in that.

10 **Q. You also testified earlier today that**  
11 **you were not yourself involved in documenting any**  
12 **of the changes to the contract that followed the**  
13 **court hearing, correct?**

14 A. I am sorry, can you be more specific  
15 what you mean by changing the contract?

16 **Q. Sure. I think it was your**  
17 **understanding that following the agreement that**  
18 **was presented to the court, there was some sort of**  
19 **documenting of that agreement?**

20 A. Yeah, there was a -- and we went  
21 through it as one of the e-mails, there was a  
22 documentation process that needed to take place to  
23 reflect the agreement that was discussed.

24 **Q. Do you know who was involved in that**  
25 **process?**

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 A. Who was involved in the process of  
3 documenting?  
4 Q. Yes.  
5 A. I think the main law firm was Weil.  
6 Again, I don't know the specific people that were  
7 involved. I could speculate on who I think was  
8 involved.  
9 Q. First, do you know anyone at Lehman  
10 who was involved in documenting the deal following  
11 the court hearing?  
12 A. Yeah, I believe Steve Berkenfeld was  
13 involved, but I don't know with certainty because  
14 I didn't see him actually documenting things  
15 myself, but it would -- I would have expected  
16 Steve to have been involved in that effort.  
17 Q. Anybody else?  
18 A. I can't -- there are no specific names  
19 that I could give you. Again, I could speculate  
20 who I think was involved.  
21 Q. Why don't you go ahead and speculate,  
22 but I understand you don't know for sure. But who  
23 are the people you personally might ask if you  
24 were trying to find out who documented the deal as  
25 it changed or documenting anything following the

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 EXAMINATION BY  
3 MR. OXFORD:  
4 Q. Good afternoon, Mr. Lowitt. My name  
5 is Neil Oxford. I am with the law firm of Hughes,  
6 Hubbard & Reed. We represent the SIPA trustee.  
7 Could you have in front of you Exhibit  
8 219. If you could direct your attention to the  
9 part of the subject line in the last sentence  
10 where it says, "We did find 5 billion of  
11 exchange listed options which we are  
12 investigating."  
13 I believe you testified that you, when  
14 you investigated, you found what that was already  
15 included as part of the business transaction.  
16 A. Yes.  
17 Q. Is that correct?  
18 A. That is correct.  
19 Q. Can you explain that a little further,  
20 which part of the business transaction was this 5  
21 billion dollars a part of?  
22 A. Well, again, I don't have a  
23 recollection of the 5 billion specifically, so  
24 again, I have no recollection of where that came  
25 from. I do know that the exchange-listed sort of

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 court hearing.  
3 A. Well, again, I think the people who  
4 negotiated the deal would have been involved. I  
5 think Steve, Steve Berkenfeld would have been  
6 involved. I think the senior lawyers from Weil  
7 would have been involved. I would guess that Alex  
8 Kirk may have been involved. But again, I'm  
9 basing that not on any specific knowledge, I'm  
10 basing that on my understanding of sort of the  
11 roles that different people played at Lehman.  
12 Q. On Sunday -- where were you Sunday, at  
13 Weil's office, on the Sunday, September 21st, the  
14 day before the closing?  
15 A. Yeah, I spent a lot of the day at  
16 Weil.  
17 Q. Who else from Lehman was there at the  
18 office with you?  
19 A. Paolo Tonucci was there, Robert Azerad  
20 was there, Bart McDade was there. I think Alex  
21 Kirk was there, that's my recollection, and Steve  
22 Berkenfeld was there. I'm sure there were others.  
23 Those are the -- the listing includes those.  
24 MS. TAGGART: OK, that is all the  
25 questions I have.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 options business was one that we came to  
3 understand was included in the deal, that that  
4 business was being taken over by Barclays in its  
5 entirety and that was part of what had been agreed  
6 to on the, I guess, on the Tuesday.  
7 Q. Did that business deal, to your  
8 understanding, sir, change at any point?  
9 A. Again, I wasn't part of the final -- I  
10 wasn't aware of how the whole thing was coming  
11 together in the final version. But given that it  
12 was included -- the business itself was included  
13 as part of the earlier transaction, the assumption  
14 that we were working with was it would be included  
15 in the remaining transaction and so we didn't  
16 continue to do any additional work on looking for  
17 value in the exchange-listed options.  
18 Q. Just so I am clear, the  
19 exchange-listed options you are e-mailing  
20 Mr. McDade about in Exhibit 219 don't form any  
21 part of the repo that we have been discussing  
22 today, correct?  
23 A. That's correct. That would have --  
24 the repo would have been the repo and then we were  
25 looking for value in items away from that. There

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2 was a long list that was generated, including  
3 15c3, the good faith lock-up, the TBA settlement,  
4 FX settlement, and there was obviously an item  
5 that somebody had identified as a potential source  
6 of value which was exchange-listed options and  
7 that was dropped from our investigation because  
8 our understanding was that it was already included  
9 in the transaction as a stand-alone business.

10 Q. And from whom did you gain that  
11 understanding, sir?

12 A. I don't have a precise recollection of  
13 who I would have got that from. I think that -- I  
14 mean to the best of my recollection, that was  
15 something that Paolo Tonucci had looked into and  
16 communicated, but I do know -- I do recall that we  
17 didn't continue to investigate exchange-listed  
18 options. Our focus was on the 15c3 and  
19 unencumbered collateral.

20 Q. Was it your understanding, sir, that  
21 Barclays was to step into the shoes of Lehman  
22 insofar as Lehman owned exchange-listed options?

23 A. Again, I didn't have a sense of what  
24 was agreed to between the parties with regard to  
25 this. What I do recall was that this was a

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2 business that was included in the transaction and  
3 didn't represent a place where we should  
4 investigate to determine additional sources of  
5 value. How precisely Barclays was going to engage  
6 with regard to this business, I wasn't aware of.

7 Q. Can you give me your definition of  
8 what you meant by exchange-listed options in  
9 Exhibit 219, please?

10 A. Again, I --

11 Q. What kind of assets were covered in  
12 exchange-listed options as you used it in this  
13 document?

14 A. Again, I don't recall precisely --  
15 there was sort of a list that identified potential  
16 sources of value and exchange-listed options had  
17 made it to the list and then was removed from the  
18 list because it was already included in the deal.  
19 So that's what I would say around that.

20 If you are asking me the more general  
21 question away from this about what are  
22 exchange-listed options, they are, you know,  
23 derivative contracts that are listed on an  
24 exchange and sort of collateralized with that  
25 exchange.

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2 Q. In the context of the use of that  
3 phrase "exchange-listed options" in this document,  
4 sir, would that include short options as well as  
5 long options?

6 A. Again, in -- for the purposes of this,  
7 we were engaged in an exercise to identify  
8 additional sources of value and that, the  
9 investigation suggested that we would not look for  
10 value in exchange-listed options. So that was --  
11 we didn't do any work on exchange-listed options.  
12 So what actually made it into the transaction was  
13 what was agreed to between the parties and really  
14 we were just, we didn't pursue as a source of  
15 value which could be included in the transaction  
16 potentially.

17 Q. Again, I think I have got this, but  
18 just so I am clear, to the best of your knowledge,  
19 the exchange-listed options were never removed  
20 from the deal between Barclays and Lehman?

21 A. I'm not aware but -- I'm not aware  
22 that -- I'm not aware either way.

23 Q. OK. Do you have any knowledge as to  
24 whether the 5 billion dollars that's estimated  
25 here for exchange-listed options includes margin

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 and deposits at various exchanges?

3 A. Again, I -- I have no recollection of  
4 where the 5 billion came from or what it reflects.  
5 It was something that we looked at to determine if  
6 it was a potential source of value, as were  
7 others, and determined that it wasn't a place we  
8 needed to look because it was already included in  
9 the deal, was my recollection of why we didn't.  
10 We found, for example, in the TBA and FX  
11 settlements that there was no value in those  
12 items. So that was the investigation that we were  
13 doing on the Friday.

14 Q. Do you recall having any conversations  
15 at any time, sir, in the week from 15th of  
16 September until the closing on the 22nd with  
17 anybody other than Mr. Tonucci about the inclusion  
18 or otherwise of exchange-listed options in the  
19 transaction between Lehman and Barclays?

20 A. Again, I have no recollection of any  
21 conversations besides the one with Paolo.

22 Q. Are you able to testify any further  
23 about the details of your conversation with  
24 Mr. Tonucci?

25 A. Again, the only thing that I recall



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1 LOWITT - HIGHLY CONFIDENTIAL  
2 was that this was not an item that we needed to  
3 continue to investigate because it was already  
4 included in the deal.  
5 Q. OK. I am handing what you has  
6 previously been marked in these depositions as  
7 Exhibit 95B. If you could take a moment to review  
8 that document, I am going to focus primarily on  
9 the e-mail, and let me know when you have had a  
10 chance to do that.  
11 A. I've read through the e-mail trail.  
12 Q. Do you recognize this document, sir?  
13 A. I don't have a recollection of this.  
14 Q. You see that it is an e-mail that was  
15 sent to you by Francis Pearn on Sunday the 21st of  
16 September. Do you see that?  
17 A. I do see that, yes.  
18 Q. And the time here is reflected, and  
19 GMT, so it was sent to you at 4:03 p.m. eastern?  
20 Do you have any understanding of why Mr. Pearn  
21 would send this document to you?  
22 A. I mean, I don't know specifically why  
23 he would have. I was the CFO of the firm and  
24 Frank was in the finance department, so that might  
25 be a reason why he would have included me in it.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 some point during the week that because Lehman was  
3 no longer posting margin, that the OCC sold out  
4 the Lehman position and would have -- would have  
5 been satisfied with whatever the obligations it  
6 had were and I don't know how that -- how much  
7 collateral was left after that.  
8 Q. If you look at the first attachment,  
9 sir. Do you see in the middle of the page at the  
10 top it says "activity date"?  
11 A. I do.  
12 Q. And that date is 9/22/08, correct?  
13 A. Yes.  
14 Q. And below, there is a system date and  
15 that date is 9/20/08?  
16 A. Yes.  
17 Q. Does that refresh your recollection as  
18 to the collateral that LBI owned that was posted  
19 at OCC as of the date of this e-mail?  
20 A. Again, I -- I don't recall spending  
21 any time around the collateral at OCC on the  
22 Sunday or on any of the other days. To say we  
23 were engaged in, you know, efforts to fund the  
24 firm, to effect the repo, and to identify sources  
25 of value and really, I didn't focus any attention

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. Are you familiar with the type of  
3 report that is attached to this e-mail, sir?  
4 A. I mean, I can't recall ever looking  
5 through this report or one like it.  
6 Q. Reading the e-mail that Mr. Pearn  
7 sends to you and others, it says "Craig Jones  
8 provided the OCC statements as of September 22 for  
9 the LBI 074 account. The first statement shows  
10 collateral value of 522 million (cash and  
11 government securities) in LBI. The second file  
12 details approximately 2 billion of collateral,  
13 (letters of credit, cash and security). Craig and  
14 Dan confirmed these balances with the OCC and can  
15 answer questions you may have."  
16 Do you see that?  
17 A. I do.  
18 Q. Would you agree with me that this  
19 e-mail Mr. Pearn -- withdrawn.  
20 Would you agree with me that the  
21 e-mail that Mr. Pearn sends to you reflects that  
22 there is substantial collateral value held by LBI  
23 at the OCC?  
24 A. Well, it suggests there is a lot of  
25 collateral at the OCC. My recollection was at

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 on this over that time period.  
3 MR. OXFORD: OK, that is all I have on  
4 that document.  
5 (Exhibit 228, e-mail dated 9/21/2008  
6 at 8:09:34 p.m. marked for identification,  
7 as of this date.)  
8 A. Do you mind if we take a short break?  
9 Q. Sure.  
10 (Recess)  
11 Q. Mr. Lowitt, I would like to hand you  
12 what I have marked as Exhibit 228.  
13 A. Yes.  
14 Q. Which is an e-mail from Jerry Reilly  
15 to you, Mr. Kelly and Mr. O'Meara entitled, "VIX,  
16 V-I-X Statements," and on Sunday, the 21st, 4:08  
17 eastern in the afternoon. Why don't you take a  
18 moment to read through that document. Again, I am  
19 going to ask you mostly about the e-mail rather  
20 than the attachments. Let me know when you have  
21 had a chance to do that?  
22 A. I have.  
23 Q. Do you recognize this document, sir?  
24 A. I don't.  
25 Q. In the chain below where it is

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 forwarded to you, Mr. Michael Neilson writes to  
3 Mr. Francis Pearn and others: Here are the  
4 clearing house runs. Do you know what the  
5 clearing house runs are?

6 A. No, I don't.

7 Q. Do you know what the reference to VIX  
8 is in the subject line?

9 A. I mean, I don't know. The VIX is an  
10 instrument that is associated with the volatility  
11 of the equity markets.

12 Q. Mr. Reilly writes to you, "This has  
13 been confirmed as a good balance. We are going to  
14 send to BarCap who is looking for our positions  
15 and balances, 507 M" -- which I take it to be 507  
16 million? Do you see that?

17 A. I see that. I don't know if that is  
18 millions or thousands. But I can see it is 507 M.  
19 I'm sure you could show me that it is millions.

20 Q. I'm sure I could, but I'm not so sure  
21 it matters if you don't remember the document. Do  
22 you remember having -- withdrawn.

23 Do you have any understanding of why  
24 Mr. Reilly sent you this e-mail?

25 A. I don't know why he did. I imagine he

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 did you have any conversations with him about the  
3 inclusion or otherwise in the assets going to  
4 Barclays of exchange-traded derivatives or any  
5 assets to secure those derivatives?

6 A. I have no recollection of discussions  
7 with either Jerry or Martin or Chris or any of the  
8 folks on this e-mail about that.

9 MR. OXFORD: That is all I have on  
10 this document.

11 (Exhibit 229, e-mail dated 9/21/2008  
12 at 6:20:35 p.m. marked for identification,  
13 as of this date.)

14 MR. BERNSTEIN: By the way, I  
15 actually -- I should do this -- I'm assuming  
16 with this and the prior document, which are  
17 not Bates stamped, that Counsel has a -- it  
18 is Counsel's understanding that these are,  
19 in fact, attached documents in the real  
20 world?

21 MR. OXFORD: Yes, that is my  
22 information.

23 Q. Mr. Lowitt, take your time and  
24 whenever you're ready, let me know when you have  
25 had a chance to review Exhibit 229.

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 was keeping -- he felt he should include me in a  
3 mail because I was the CFO and he was reporting to  
4 me and it would be something that he felt I would  
5 want to see.

6 Q. From your review of this e-mail, do  
7 you have an understanding of what he was keeping  
8 you in the loop on?

9 A. I mean, that Barclays was looking for  
10 information and that this was part of the  
11 information and what they were looking for.

12 Q. Does this refresh your recollection  
13 about the inclusion or otherwise in the business  
14 deal between Lehman and Barclays of  
15 exchange-traded derivatives?

16 A. Again, exchange-traded derivatives, I  
17 was -- I spent no time on it. It wasn't -- it  
18 just wasn't a focus either for me during that  
19 period.

20 Q. You don't recall any conversations  
21 with Mr. Kelly about that subject?

22 A. I don't recall any conversations with  
23 Martin about exchange-traded derivatives or about  
24 this.

25 Q. What about Mr. Reilly, same question,

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1 **LOWITT - HIGHLY CONFIDENTIAL**

2 A. Yeah, I have looked at it.

3 Q. It looks to me to be an e-mail from  
4 Robert Azerad to Gary Romain at Barclays, James  
5 Walker at Barclays, T.J. Gavenda, also at  
6 Barclays, and you and others at Lehman are copied,  
7 is that correct?

8 A. That's what it suggests on the first  
9 page.

10 Q. It was sent on the Sunday, 21st of  
11 September at 2:20 eastern. The subject is  
12 "updated opening balance sheet." Do you see that?

13 A. I do.

14 Q. Do you recognize this document?

15 A. I don't recognize it.

16 Q. Did you have any responsibility,  
17 direct or otherwise, for the creation of an  
18 opening balance sheet for Barclays?

19 A. I am sorry, could you just repeat, did  
20 you have any responsibility --

21 Q. Did you have any responsibility,  
22 direct or otherwise, for the creation of an  
23 opening balance sheet for Barclays?

24 MR. BERNSTEIN: Objection, vague and  
25 ambiguous.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 You may answer.  
3 **Q. Let me ask it this way: Did you have**  
4 **any responsibility for creating an open balance**  
5 **sheet for Barclays?**  
6 A. I don't believe I had responsibility  
7 for creating an opening balance sheet for  
8 Barclays. I think we were -- we needed to provide  
9 information to Barclays so that they could go  
10 through their process and there was pieces of  
11 information that they would have looked to from us  
12 to provide, but that, you know, establishing an  
13 opening balance sheet was going to be their  
14 responsibility.  
15 **Q. OK, did Mr. Azerad work for you?**  
16 A. Robert reported in to Paolo and Paolo  
17 reported to me, so Robert was in my chain.  
18 **Q. Do you have any understanding that**  
19 **Mr. Azerad created the opening balance sheet that**  
20 **is attached to this e-mail?**  
21 A. Again, I'm not in a position to say  
22 who created this. I just have no knowledge of who  
23 would have done this.  
24 **Q. Safe to say then you did not have any**  
25 **involvement in creating this opening balance**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **Q. One of those additional sources of**  
3 **value that you have testified about at length is**  
4 **the 15c3 lock-up release, correct?**  
5 A. Yes.  
6 **Q. And that's shown is there as 1 billion**  
7 **dollars.**  
8 A. That's what it is shown here.  
9 **Q. You have already testified about a**  
10 **search for other unencumbered assets that you**  
11 **believe were valued at approximately 2 billion**  
12 **dollars, correct?**  
13 A. At 1.9 to 2 billion.  
14 **Q. 1.9 to 2 billion. Do you see anywhere**  
15 **on this spreadsheet where those unencumbered**  
16 **assets balance at 1.9 to 2 billion dollars are**  
17 **reflected?**  
18 A. I don't see it on this schedule. But  
19 again, I don't think that the schedule would  
20 necessarily have represented the transaction that  
21 was agreed to. Also -- another example, the 15c3  
22 lock-up release we talked about earlier was agreed  
23 to at around 760 million dollars.  
24 **Q. The 5 billion dollars of**  
25 **exchange-listed options that you included in the**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **sheet?**  
3 A. I can't recall having any involvement  
4 in creating this.  
5 **Q. You see that it was sent at 2:20 p.m.**  
6 **on Sunday the 21st?**  
7 A. I do see that.  
8 **Q. If you take a moment to review the**  
9 **balance sheet and then tell me if, to the best of**  
10 **your recollection, it accurately reflects the**  
11 **business deal between Barclays and Lehman as you**  
12 **understood it at the time the e-mail was sent?**  
13 A. Again, I -- I didn't know all the  
14 items of what went into the business deals, so  
15 what I would have been aware of was that there was  
16 a repo transaction, that there was the assumption  
17 of liabilities for sort of bonuses or cure  
18 payment, although again, I didn't know that with  
19 any certainty because I didn't know that that made  
20 it into the final transaction. And I know that we  
21 had been looking for, you know, additional sources  
22 of value but I can't say more than that or how  
23 that would have been reflected in a balance sheet  
24 or what Barclays would have wanted to show in  
25 their opening balance sheet.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **subject line of Exhibit 219, do you see those**  
3 **exchange-listed options listed anywhere in the**  
4 **opening balance sheet marked as Exhibit 229?**  
5 A. I don't see it listed.  
6 **Q. Do you have any understanding of why**  
7 **it would not be listed?**  
8 A. Again, I don't know who pulled this  
9 schedule together and I don't know the amount of  
10 knowledge they would have had about all the  
11 elements of the deal. And even if they had known  
12 about that item, I don't know if they would have  
13 had any knowledge of what that was actually worth,  
14 again, it wasn't something that I was aware of any  
15 work that went on to determine if there was or how  
16 much value there was in that and so just wouldn't  
17 have known how -- I don't know how anybody would  
18 have reflected it on the balance sheet.  
19 **Q. Well, they could have used the 5**  
20 **billion dollar figure that you told Mr. McDade**  
21 **that you had found in Exhibit 219, right?**  
22 A. We didn't say we had found it. We  
23 said in that exhibit that there was  
24 exchange-listed options. I don't know where the 5  
25 billion came from, and I don't know if 5 billion

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 was right. But you're right, somebody could have  
3 put that there. But again, I don't know who put  
4 this together and I don't know what they were  
5 aware of and I, again, don't know what the real  
6 valuation of exchange-listed options business was.  
7 And I wasn't aware of any work that was done to  
8 determine that.  
9 **Q. Could you just briefly have Exhibit 19**  
10 **in front of you, please?**  
11 A. Sure, 19. Do see anywhere on Exhibit  
12 19 a description or a figure that includes the  
13 exchange-listed options that you referenced in  
14 your e-mail marked as Exhibit 219?  
15 MR. HUME: Objection, vague and  
16 ambiguous.  
17 A. Again, I don't know how  
18 exchange-listed options turn up on balance sheets.  
19 So I wouldn't know this. There is derivative  
20 lines here, it's possible that it is in those  
21 lines, but again, I'm just speculating. I don't  
22 know where it would have turned up here.  
23 **Q. OK. You testified earlier about a**  
24 **conversion, sir. Do you remember that testimony?**  
25 A. The conversion.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 party to the resolution of those -- of that.  
3 **Q. With whom did you discuss that issue,**  
4 **sir?**  
5 A. I don't recall discussing it with  
6 anybody. There was a large forum that included  
7 participants from a number of different --  
8 representing Barclays and JP Morgan and DTCC and  
9 creditors and others and my recollection is that  
10 at a certain point, the people from Barclays and  
11 people from DTCC left that group and went through  
12 and talked through that issue themselves.  
13 **Q. Did you have any understanding, sir,**  
14 **that Barclays was conducting due diligence into**  
15 **Lehman's positions at DTC during the day on Sunday**  
16 **the 21st?**  
17 A. I'm not sure I understand what the  
18 word "due diligence" means, but I do know that  
19 Barclays were trying to understand what the Lehman  
20 obligations were vis-a-vis DTCC and what, if any,  
21 were the risks that they would take on if they  
22 stepped into LBI's shoes and that those were  
23 discussions that they had in my recollection with  
24 people in operations like Alastair Blackwell.  
25 **Q. Did you ever come to have an**

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **Q. You used the word "conversion"?**  
3 A. Actually somebody else used the word  
4 "conversion," but I did say that I understood it  
5 to be the movement of collateral from JP Morgan  
6 Chase to BoNY to reflect the replacement of the  
7 Fed repo with the Barclays repo.  
8 **Q. And the way in which you used that**  
9 **phrase "conversion" has nothing to do with the OCC**  
10 **or exchange-traded derivatives, correct?**  
11 A. That is correct.  
12 **Q. You mentioned, sir, that the subject**  
13 **of discussion on Sunday the 21st of September was**  
14 **a series of questions about what would happen if**  
15 **Barclays steps into the shoes of Lehman in the**  
16 **coming weeks. Do you remember that testimony?**  
17 A. I do, yes.  
18 **Q. Focusing on the DTCC for the present,**  
19 **did you tell me what your recollection is of any**  
20 **discussions about Barclays stepping into the shoes**  
21 **of Lehman at DTCC?**  
22 A. I was aware that on the Sunday, there  
23 were ongoing discussions between the Barclays  
24 representatives and representatives from DTCC  
25 around how that would be covered, but I was not

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 **understanding of what Barclays concluded about the**  
3 **risks they would take on if they stepped into**  
4 **Lehman's shoes at DTCC?**  
5 A. I was not part of that discussion and  
6 I did not know where Barclays came out or what  
7 their assessment of those risks were.  
8 **Q. You didn't talk to Mr. Blackwell about**  
9 **that?**  
10 A. I don't recall having a conversation  
11 with Mr. Blackwell about that. I do -- but I  
12 don't believe that Mr. Blackwell would have been  
13 aware of what Barclays' assessment of those risks  
14 would have been. He would have explained the  
15 risks as he understood them and it was up to  
16 Barclays to make an assessment of those risks  
17 themselves.  
18 **Q. Do you know who at Barclays was**  
19 **involved in assessing the risks of stepping into**  
20 **Lehman's positions in DTC?**  
21 A. Again, I wasn't party to those  
22 discussions, but of the people at Barclays that  
23 were involved, my recollection is that it included  
24 Rich Ricci, Gerard Larocca, probably Jonathan  
25 Hughes. There may be others at Barclays that were

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<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 involved in those discussions.</p> <p>3 Q. Did you ever hear, sir, that Barclays</p> <p>4 had decided not to take Lehman's positions at DTC</p> <p>5 because there were concerns about the liabilities</p> <p>6 associated with those positions?</p> <p>7 MR. HUME: Objection, lacks</p> <p>8 foundation.</p> <p>9 A. Yeah, I have no recollection of how</p> <p>10 that got resolved.</p> <p>11 Q. Just a couple of questions on C3, sir.</p> <p>12 Did you understand that the transfer of any assets</p> <p>13 from Lehman's 15c3 reserve was conditional upon an</p> <p>14 approval of the SEC?</p> <p>15 MR. HUME: Objection, calls for legal</p> <p>16 speculation -- legal conclusion.</p> <p>17 A. Again, I -- what I was aware of was</p> <p>18 that the resolution of the 15c3 excess was</p> <p>19 uncertain because it was a formula and nobody</p> <p>20 would know precisely how much excess there was</p> <p>21 when the customer positions were fully unwound.</p> <p>22 So there was uncertainty about what that was going</p> <p>23 to -- what that number was going to eventually</p> <p>24 become.</p> <p>25 Q. Was it your understanding, sir, that</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 the resolution of the 15c3 excess was that any</p> <p>3 transfer of 15c3 excess would be conditional upon</p> <p>4 the existence of an excess?</p> <p>5 MR. HUME: Objection, lacks</p> <p>6 foundation, calls for a legal conclusion.</p> <p>7 A. I don't know what actually made it</p> <p>8 into the contract with regard to 15c3. What I was</p> <p>9 involved with, as I have spoken about today, is</p> <p>10 the efforts to identify what our best estimate of</p> <p>11 what that excess was and to make that available to</p> <p>12 those who are involved in negotiating to determine</p> <p>13 how they were going to treat that and I don't know</p> <p>14 how it was treated specifically in the final</p> <p>15 resolution between Barclays and Lehman.</p> <p>16 Q. Did you understand, sir, that there</p> <p>17 were certain difficulties negotiated with</p> <p>18 calculating the 15c3 requirement over the weekend</p> <p>19 of the 21st and 22nd of September?</p> <p>20 A. I was aware that the data that the</p> <p>21 people needed to -- the data were -- there were a</p> <p>22 lot of data issues associated with running the 15C</p> <p>23 lock-up that weekend.</p> <p>24 Q. Did you or anybody who reported to you</p> <p>25 come to the conclusion as to the existence or</p>
Page 272	Page 273
<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 otherwise of an excess in the 15c3 reserve over</p> <p>3 the weekend of the 21st and the 20th of September?</p> <p>4 A. Well, again, I -- we didn't -- my</p> <p>5 recollection was that the estimates of the 15c3</p> <p>6 excess that had been generated earlier in the week</p> <p>7 were believed to be accurate reflections and that</p> <p>8 those were computed without all the dirty data</p> <p>9 that was associated with all the collateral</p> <p>10 movements and other issues in LBI, and so the</p> <p>11 excess that had been estimated earlier was a good</p> <p>12 reflection of what the excess was likely to be.</p> <p>13 Because there wasn't a lot of customer activity</p> <p>14 that had taken place subsequent to when those</p> <p>15 earlier calculations were made.</p> <p>16 Q. What do you mean by "dirty data"?</p> <p>17 A. Well, there was a fair amount of chaos</p> <p>18 in the marketplace towards the end of that week.</p> <p>19 There was a lot of fails. There was items that</p> <p>20 weren't being posted accurately and those were all</p> <p>21 elements that made the computation of 15c3</p> <p>22 difficult that weekend.</p> <p>23 Q. Did you ever come to have an</p> <p>24 understanding, Mr. Lowitt, that there was a change</p> <p>25 in the deal between Lehman and Barclays and that</p>	<p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 change was that no cash was to be transferred from</p> <p>3 Lehman to Barclays?</p> <p>4 A. Again, I was not part of the</p> <p>5 negotiating teams and I wasn't aware of what was</p> <p>6 agreed to between the two parties. So I would</p> <p>7 have no view on whether that was agreed to or not</p> <p>8 agreed to.</p> <p>9 Q. Nobody ever told you that?</p> <p>10 A. No, I don't recall.</p> <p>11 Q. Even subsequent to the transaction,</p> <p>12 did anyone ever discuss the inclusion or otherwise</p> <p>13 of cash in the deal between Lehman and Barclays?</p> <p>14 MR. HUME: Obviously excluding any</p> <p>15 conversations with counsel for Barclays or</p> <p>16 your own counsel.</p> <p>17 Q. I offer the same caveat as Mr. Gaffey,</p> <p>18 I am not looking for --</p> <p>19 A. I have no recollection of anybody</p> <p>20 indicating that the transfer of cash was not --</p> <p>21 was excluded from the deal in any way. It was</p> <p>22 just no discussion one way or the other with me</p> <p>23 that I recall.</p> <p>24 MR. OXFORD: Can I mark this as my</p> <p>25 last one.</p>

<p style="text-align: right;">Page 274</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit 230, e-mail dated 9/22/2008</p> <p>3 at 11:53:18 a.m. marked for identification,</p> <p>4 as of this date.)</p> <p>5 Q. This, I promise, Mr. Lowitt is my last</p> <p>6 exhibit which I have marked as Exhibit 230. It is</p> <p>7 an e-mail from you to Mr. Tonucci at 11:53 a.m.</p> <p>8 Greenwich Mean Time so 7:53 Eastern on the 22nd.</p> <p>9 And below, Mr. Tonucci writes to you and</p> <p>10 Mr. McDade on the subject of closing call saying,</p> <p>11 "Cash should go in the next five minutes.</p> <p>12 Congratulations! Paolo." And you reply, "What a</p> <p>13 relief!! Ian." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you have any understanding of what</p> <p>16 Mr. Tonucci meant by his reference to cash going</p> <p>17 in the next five minutes?</p> <p>18 A. I don't have a specific recollection.</p> <p>19 Again, if I was speculating, it would be the cash</p> <p>20 from Barclays to Lehman to effect the transaction</p> <p>21 would move and that that was establishing that the</p> <p>22 transaction was actually closing. And my response</p> <p>23 is it is actually done. Because I think we knew</p> <p>24 that it needed to happen before 8 o'clock when the</p> <p>25 markets opened.</p>	<p style="text-align: right;">Page 275</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 Q. You made it by 7 minutes.</p> <p>3 A. It was a stressful time.</p> <p>4 Q. I'm sure it was.</p> <p>5 MR. OXFORD: I have no further</p> <p>6 questions for you at this time. Thank you,</p> <p>7 sir.</p> <p>8 THE WITNESS: Thank you very much.</p> <p>9 MR. GAFFEY: Just one or two to follow</p> <p>10 up, I promise.</p> <p>11 EXAMINATION BY</p> <p>12 BY MR. GAFFEY:</p> <p>13 Q. Mr. Lowitt, in response to --</p> <p>14 Ms. Taggart asked you a series of questions about</p> <p>15 the logic behind the discount behind the idea of a</p> <p>16 discount applying to a large transaction by a</p> <p>17 firm. You said, and I think I have the words</p> <p>18 here, I am if I am a little off forgive me, if</p> <p>19 anyone had spoke to Bart or Kirk, they would agree</p> <p>20 it made sense, but I don't recall a specific</p> <p>21 conversation. And that was in the context of</p> <p>22 talking about these bulk prices.</p> <p>23 Do you know who on the Lehman side of</p> <p>24 the table decided that the point was negotiable</p> <p>25 at all? Who decided that it was negotiable</p>
<p style="text-align: right;">Page 276</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 whether Lehman would take less than the marks</p> <p>3 shown on its books for its securities?</p> <p>4 A. I don't. It is a question for you to</p> <p>5 ask those people who were involved in the</p> <p>6 negotiations.</p> <p>7 Q. The reason I ask you, you made a</p> <p>8 reference to Bart or Kirk. I assume Bart is Bart</p> <p>9 McDade and Kirk is Alex Kirk?</p> <p>10 A. Yes.</p> <p>11 Q. Is there a reason Alex Kirk is a</p> <p>12 person who might have some information on that?</p> <p>13 A. Well, Alex was running our principal</p> <p>14 business and was involved in the -- was close to</p> <p>15 Bart and was engaged in the negotiation as best I</p> <p>16 understood it. So that was the reason I included</p> <p>17 those two names and they would both be very</p> <p>18 knowledgeable about capital markets and how one</p> <p>19 disposes of big blocks of assets.</p> <p>20 Q. And my question as to who made the</p> <p>21 decision as to whether it was appropriate to</p> <p>22 negotiate at all was a very broad one. It doesn't</p> <p>23 go to the process that you spoke about before of</p> <p>24 determining what it was. Who made the</p> <p>25 determination, all right, we will talk to Barclays</p>	<p style="text-align: right;">Page 277</p> <p>1 LOWITT - HIGHLY CONFIDENTIAL</p> <p>2 about selling assets for less than we carry them</p> <p>3 on our books and you don't know who it was who</p> <p>4 made that decision?</p> <p>5 A. I'm not aware of who would have made</p> <p>6 that decision.</p> <p>7 Q. OK, and Mr. Oxford asked you a</p> <p>8 question about the conversion which is a topic</p> <p>9 that I had raised with you earlier and</p> <p>10 unfortunately for you, it reminded me of a</p> <p>11 document that I promise you I won't be very long</p> <p>12 with it.</p> <p>13 (Exhibit 231, document Bates stamped</p> <p>14 10254271 (two pages) marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. Take a look at the document,</p> <p>17 Mr. Lowitt, sufficiently to determine if you</p> <p>18 remember seeing it before.</p> <p>19 A. Yeah, I have read it.</p> <p>20 Q. Have you seen the document before</p> <p>21 today?</p> <p>22 A. I don't recall seeing it before.</p> <p>23 Q. I would direct your attention to</p> <p>24 the -- again, the top two lines which we are</p> <p>25 disregarding, "administrator" and "sent," below</p>

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 that, the latest e-mail in the chain is from you  
3 to Alastair Blackwell, Robert Azerad entitled,  
4 "The Conversion," where you say, "Need people to  
5 work all night on it. Need to know we can get  
6 BarCap their money by Sunday night. We had a list  
7 we showed them. Can we not give them that  
8 collateral. Robert produced it. Ian." Would you  
9 take a look there?

10 A. Yeah.

11 Q. And then if you go to the very bottom,  
12 the very last e-mail, and that is from a Nancy  
13 Reyda to the ITD war room on the previous evening,  
14 Friday, September 19, at about 8:08 p.m.

15 A. I do see that.

16 Q. And she writes to the war room, "As  
17 you all probably know by now, the asset move was  
18 orchestrated in such a way that the conversion  
19 move was not needed this weekend. We will regroup  
20 on Monday to discuss these next steps." Do you  
21 see that?

22 A. I do.

23 Q. Having seen the two ends of this  
24 e-mail conversation where Nancy Reyda is telling  
25 the war room that the asset transfer was

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 orchestrated in such a way that we can go home,  
3 and you say no, everybody needs to work all night,  
4 does that refresh your recollection as to what the  
5 conversion was?

6 A. I think the conversion here is  
7 different than the conversion that I have been  
8 talking about. So the conversion that I was  
9 referring to, without the benefit of this was just  
10 the movement of assets from the JP Morgan to BoNY  
11 to effect the repo.

12 Again, I don't have a recollection of  
13 this, but what I think Nancy is sharing with  
14 people is that there is no requirement to move  
15 the assets in the way that was envisaged in the  
16 original transaction, which was moving large  
17 amount of specific assets and at specific  
18 prices to Barclays in one way or another. And  
19 then the -- my mail at the top, again, I am  
20 doing this by just reading through this -- is  
21 saying that the reserve formula requires recs.  
22 R-E-C-S to be run and processed,  
23 reconciliations, and that what I am saying in  
24 this is that we actually need to, we need to  
25 work on those reconciliations so we can update

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 the reserve formula. The reserve formula would  
3 be referring to the 15c3 lock-up and then my  
4 mail is really referring to that income  
5 collateral. So it seems to be a combination of  
6 a number of different things in this chain.

7 Q. And in the middle of that sequence is  
8 an e-mail from Alastair Blackwell to you and  
9 Gerard Larocca, September 27, 10 p.m., asking,  
10 "FYI, what do you want us to do here, use Thursday  
11 night or can it wait until tomorrow?"

12 Do you understand what is meant by use  
13 Thursday night?

14 A. Again, I'm basing that on what goes  
15 below that. But usually 15c3 lock-up calculation  
16 that was calculated on the Thursday night.

17 Q. OK.

18 A. Rather than having to rerun it and  
19 then to the questions that we had a little while  
20 ago about the need to rerun the 15c3 over the  
21 weekend, that was -- that was work that needed to  
22 get done in order to run that 15c3.

23 MR. GAFFEY: Thanks, I have nothing  
24 else.

25 MR. HUME: I have I am sorry, to do

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1 **LOWITT - HIGHLY CONFIDENTIAL**  
2 this. I have two things to quickly clean  
3 up.

4 EXAMINATION BY  
5 MR. HUME:

6 Q. Mr. Lowitt, if you look at Exhibit 229  
7 that Mr. Oxford showed you. Do you have Exhibit  
8 229 in front of you?

9 A. I do.

10 Q. If you look at the spreadsheet  
11 attached or schedule attached, Mr. Oxford asks you  
12 first whether you saw the unencumbered collateral  
13 that has been talked about today of approximately  
14 1.9 billion or 2 billion on this schedule. Do you  
15 remember him asking you that?

16 A. I do.

17 Q. I think you may have said that you did  
18 not see it on there. And I just wanted to ask  
19 you, you see that there is a cash number of 7  
20 billion represented. Do you see that?

21 A. I do.

22 Q. And then you see there is an inventory  
23 of a variety of classes of securities. Do you see  
24 that?

25 A. I do.

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. And that inventory totaled 44.8  
3 billion. Do you see that?  
4 A. I do.  
5 Q. Which if you add the inventory and the  
6 cash, you get to 51.8 billion. Do you see that?  
7 A. I do.  
8 Q. And do you recall saying earlier that  
9 your general recollection was that the repo  
10 collateral had a value at least from Chase of  
11 about 49.7, I think, or 49.9 billion, something  
12 like that. Do you recall that?  
13 A. I do.  
14 Q. Is it possible -- first let me ask  
15 you, do you know -- did you prepare this schedule?  
16 A. I did not prepare this schedule.  
17 Q. Do you know that the unencumbered  
18 assets, the approximately 1.9 billion or 2 billion  
19 is not included within the inventory?  
20 A. I don't know that and as you show what  
21 the sum of the numbers are, at close to 52 billion  
22 dollars, it is quite plausible that the 1.9  
23 billion dollars of unencumbered collateral is  
24 included in inventory for the purpose of this, but  
25 again, I didn't prepare it and I don't know with

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 reviewing it. I was saying I didn't see a line  
3 that referred explicitly to exchange-traded  
4 options and I didn't see a 5 billion dollar  
5 number.  
6 Again, I don't know how the schedule  
7 was created and it is possible that it includes  
8 an estimate for what the exchange-traded  
9 options are. I can't say one way or the other.  
10 MR. HUME: I have no further  
11 questions.  
12 I do want it state for the record that  
13 Exhibit 217, I have been informed -- and we  
14 can address this off line -- I just want to  
15 state it on line, from our production  
16 people, it is not an integrated document.  
17 All these sheets marked together as Exhibit  
18 217 are not a single document but multiple  
19 documents. We will have to address it off  
20 the record.  
21 MR. GAFFEY: Sounds like a vendor  
22 issue.  
23 ----  
24  
25

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 certainty if it is.  
3 Q. Mr. Oxford also asked you if you  
4 saw -- and here I just don't know whether the  
5 question was clear. He asked you if you saw the 5  
6 billion of exchange-listed options which he took  
7 as a phrase from another exhibit, Exhibit 219. Do  
8 you remember him asking you that?  
9 A. I do remember him asking me that.  
10 Q. And you said you did not see that on  
11 this schedule, Exhibit 229. Do you recall giving  
12 that answer?  
13 A. I do recall giving that answer.  
14 Q. Now, do you see a listing of 5 billion  
15 on the schedule? Let me ask the question this  
16 way: Was your answer that you did not see the 5  
17 billion for exchange-listed options or that you do  
18 not believe it is possible that exchange-traded  
19 derivatives of any kind are listed on this  
20 schedule?  
21 MS. TAGGART: Object to form.  
22 A. I mean, I see under inventory a number  
23 that says "derivatives and other contracts."  
24 Again, I didn't create this schedule  
25 and I probably didn't spend enough time

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 EXAMINATION BY  
3 MR. OXFORD:  
4 Q. I have one question based on Mr.  
5 Hume's question. You just said with respect to  
6 Exhibit 229 that it was possible that the  
7 spreadsheet attached to the e-mail included a line  
8 item for derivatives, is that correct?  
9 A. Again, I see under "inventory  
10 derivatives and other contracts."  
11 Q. What's the value of that entry, sir?  
12 A. It looks like 80.  
13 Q. And when you say 80, do you mean 80  
14 million dollars, sir?  
15 A. It doesn't say what the unit is, but  
16 given the other numbers, it seems that it would be  
17 80 million.  
18 Q. Well, you managed to answer my  
19 question about a thousand for C3 lock-up release  
20 meant 1 billion dollars, right?  
21 A. Right.  
22 Q. And you managed to answer Mr. Hume's  
23 question that figure of 7000 for cash is 7  
24 billion?  
25 A. Yes.



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1 LOWITT - HIGHLY CONFIDENTIAL  
2 Q. So it is fair to assume that the  
3 figure of 80 against the line items of derivatives  
4 and other contracts is 80 million dollars,  
5 correct?

6 MR. BERNSTEIN: Asked and answered.

7 A. Yes, I did say it was 80 million  
8 dollars.

9 Q. Do you see anywhere on Exhibit 229 an  
10 entry that reflects, separate and apart from the  
11 "derivatives and other contracts" line any entry  
12 for margin or deposits at the UCC or any other  
13 exchange?

14 MR. HUME: Objection, the document  
15 speaks for itself.

16 A. Again, I didn't develop the schedule.  
17 I don't know precisely what makes it into the  
18 different lines. The words "margin" or -- and  
19 "OCC," I don't see on the schedule.

20 Q. And do you see any other entry under  
21 the subheading of inventory in which margin or  
22 deposits at OCC or elsewhere would naturally fit?

23 A. I didn't generate the schedule so I  
24 don't know where somebody might have done that,  
25 but the inventory categories of governments and

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 equities and mortgages and corporate debt,  
3 commercial paper and derivatives and other, you  
4 would imagine it would be in the derivatives line  
5 (Continued on next page for jurat)

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1 LOWITT - HIGHLY CONFIDENTIAL  
2 if it was anywhere.

3 MR. OXFORD: OK. Thank you, no  
4 further questions.

5 MR. BERNSTEIN: Both Mr. Lowitt and  
6 Mr. Kelly reserve the right to read the  
7 deposition and provide errata. Depositions,  
8 and provide errata.

9 (Time noted: 5:51 p.m.)

10  
11  
12 IAN LOWITT

13  
14 Subscribed and sworn to  
15 before me this day  
16 of August, 2009.  
17  
18  
19  
20  
21  
22  
23  
24  
25

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2 INDEX:

3 WITNESS	4 EXAM BY:	5 PAGE:
1. Lowitt	Mr. Gaffey	6, 276
	Ms. Taggart	216
	Mr. Oxford	248, 285
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9 EXHIBITS

10 Exhibit No.	11 Marked	12
Exhibit 216 document Bates stamped		30
BCI-EX77335 through 37		
Exhibit 217 document Bates stamped		97
BCI-EX00115595 through 654		
Exhibit 218 document Bates stamped	42628	146
Exhibit 219 document Bates stamped	138017	148
Exhibit 221 document Bates stamped	137537	154
Exhibit 220 document Bates stamped		161
10298186		
Exhibit 222 e-mail dated 9/20/2008 at		173
1:42:32		
Exhibit 223 document Bates stamped		181
10293506		
Exhibit 224 four-page e-mail dated		184
9/20/2008 at 6:12 p.m.		
Exhibit 225 two-page document Bates		189
stamped 77882		
Exhibit 226 e-mail dated September 21,		199
2008 at 2:15 p.m.		
Exhibit 227 two-page document Bates numbered		203
70327		
Exhibit 228 e-mail dated 9/21/2008 at		257
8:09:34 p.m.		
Exhibit 229 e-mail dated 9/21/2008 at		260
6:20:35 p.m.		
Exhibit 230 e-mail dated 9/22/2008 at		274
11:53:18 a.m.		
Exhibit 231 document Bates stamped		277
10254271 (two pages)		

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1 LOWITT - HIGHLY CONFIDENTIAL	1 LOWITT - HIGHLY CONFIDENTIAL
2	2 ***ERRATA SHEET***
3 CERTIFICATE	3 NAME OF CASE: In Re: Lehman Brothers, Inc.
4 STATE OF NEW YORK )	4 DATE OF DEPOSITION: 8/20/09
5 )ss:	5 NAME OF WITNESS: Ian Lowitt
6 COUNTY OF NEW YORK)	6 Reason codes:
7 I, MARY F. BOWMAN, a Registered	7 1. To clarify the record.
8 Professional Reporter, Certified Realtime	8 2. To conform to the facts.
9 Reporter, and Notary Public within and for	9 3. To correct transcription errors.
10 the State of New York, do hereby certify:	10 Page ____ Line ____ Reason ____
11 That IAN LOWITT, the witness whose	11 From ____ to ____
12 deposition is hereinbefore set forth, was	12 Page ____ Line ____ Reason ____
13 duly sworn by me and that such deposition is	13 From ____ to ____
14 a true record of the testimony given by such	14 Page ____ Line ____ Reason ____
15 witness.	15 From ____ to ____
16 I further certify that I am not	16 Page ____ Line ____ Reason ____
17 related to any of the parties to this action	17 From ____ to ____
18 by blood or marriage and that I am in no way	18 Page ____ Line ____ Reason ____
19 interested in the outcome of this matter.	19 From ____ to ____
20 In witness whereof, I have hereunto	20 Page ____ Line ____ Reason ____
21 set my hand this 20th day of August, 2009.	21 From ____ to ____
22	22 Page ____ Line ____ Reason ____
23	23 From ____ to ____
24 MARY F. BOWMAN, RPR, CRR	24 IAN LOWITT
25	25